

THE
ATTORNEY'S
POCKET COMPANION;

Or, a GUIDE to the

Practisers of the LAW:

you In TWO PARTS. *Bryant.*

BEING

A Translation of Law-Proceedings in the
Courts of *King's-Bench* and *Common-Pleas*. *1488*

CONTAINING

A COLLECTION of the common FORMS,
beginning with the Original, and ending
with the Judicial PROCESS.

Together with

An Historical as well as Practical Treatise on
EJECTMENTS.

The THIRD EDITION, carefully corrected.

To which is also added,

The *Law* and *Practice* of FINES and RECOVERIES,
and several other Precedents.

PART I.

By a GENTLEMAN of the Inner-Temple.

*Lex dudum pulchre sonuit sermone Latino,
Horrida jam patrio claudicat ista pede,
Lingua deserta vale!*

L O N D O N,

Printed for JAMES HODGES, at the *Looking-glass*, over-
against *St. Magnus Church*, *London-Bridge*. 1741.

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LAW-BOOKS *just published, and printed for*
JAMES HODGES, *at the Looking-glass, over-*
against St. Magnus Church, London-Bridge.

THE Rules of Practice common-plac'd; with
Remarks. In Two Parts. Part 1. Contain-
ing the Method of Proceeding in the Court of King's-
Bench. Part 2. Containing the Method of Proceed-
ing in the Court of Common-Pleas. The Whole exhib-
iting a View of the ancient and modern Rules and
Orders of the said Courts, digested in the best Method
extant, for the speedy finding out what Rules relate
to any Point in Practice. By an Attorney at Law.

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English Law Expofitor; containing an Explanation
of every particular Word and Term used in the Law,
with an Introduction to the Knowledge of the Law
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for the Instruction and Benefit of Students, Practitio-
ners in the Law, Justices of the Peace, the Clergy
and other Gentlemen. The Whole collected from
the best Dictionaries, and other Authorities hitherto
published. Whereto is added an Alphabetical Table of
the most usual Latin Contractions that are to be found
in our ancient Records, &c. Begun some Time since
by a Practitioner, and now carefully revised and com-
pleted by an eminent Barrister at Law. Price 6 s.

10/7/38

OCT 7 1938

The PREFACE

THE P R E F A C E.

I Shall not here set out with a pompous Assurance, that you will find where other Writers, plodding on in the old Way, lead you into Errors that are herein corrected; nor assert like another Translator, that this is done with the utmost Exactness; nor be so weak and injudicious as to tell you, that the Precedents herein were never before printed in any Language whatsoever; but do honestly and plainly assure you, that they are Translations from Books of Authority; and the Writs are taken from Forms and Precedents that have been well received and esteemed by our Ancestors, Sages in the Law. I expect many Faults herein will strike a judicious Eye, and therefore am not so vain as to boast, that there are no Imperfections in this little Tract. That would be to equal it to the Performance of that Hand which cannot err. But I hope I have not here committed any Blunders, that argue a total Ignorance of the Entries while they continued in Latin; such as I apprehend they have, who tell you, when the Entry is, *Et quia*

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prædictus defendens non venit, sed Defaltum fecit; ideo Jurata illa unde infra fit Mentio capiatur versus eum per Defaltum; *that it signifies*, the Defendant would not appear, knowing the Verdict would go against him; therefore a Verdict in that Case is taken against the Defendant by his Default; *for as to the true Meaning of these Words*, I submit to that Part of the Profession who are acquainted with the Entries, and the Foundation of their constituent Parts, if it is not hereafter described with less Uncertainty, and a little more Exactness and Truth, in Pages 106, 107, and 108. among the Proceedings in the Common Pleas, than in the Manner as above.

Nor have I said anything (I hope) which will raise such an inadequate Idea, as by translating the Title of the King's Bench Rolls, which in Latin was by the Words *adhuc de Termino Sancti Hillarii*, in this Manner, as yet of the Term of St. Hillary; when if that ingenious Gentleman would have looked into the Nature and Reason of Things, he would have found, that the Meaning of that Word *adhuc*, is a Continuation of the Rolls, and joins one Roll to another of the same Term: As for Example; the Cover or vellom'd Coat of the Rolls of every Term, describes the Rolls contained therein, to be of such a Term, by the Words *de Termino Sancti Hillarii*; and the first numbered Roll should not have that Word *adhuc*, but the Second very rightly ought to have it, to denote that that Roll is also of the Term of St. Hillary;
and

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and so on to the Rest; but why every King's Bench Practiser begins his Roll with *adhuc*, is, because he does not know what Number his Roll will have at the Time of his Entry. This I conceive is a better Reason for the Word also, than as yet: Sure it will not be thought I have added an unnecessary Gloss to the Proceedings, by not making use of the Words *Thee* and *Thou*, and thereby supposing his Majesty to speak to my Lords the Judges, and his Officers in the * Dialect of a Set of Men, who imagined they should have remained unimitated in that Part of their Simplicity. I dare say, if I shall have erred in not treading the Steps of those that have gone before me in Translation as to that Particular; the Civilians will laugh at us deservedly for making the Common Law (which, give me Leave to say, vies in its Nature with theirs, or any other human Law whatsoever) to walk in Trammels, when they are forming their Translations in such Manner, as to render them amiable and beautiful, as well as serviceable to their Country. As the Act of Parliament, and, I persuade myself, the Courts of Justice, in no wise require a precise Translation; I do not see why the Proceedings of the Courts of Law should not reap the same Advantages in their Translation by the Refinements of Time, and the consequential Embellishments the English Language and Modes of Speech have received by a Succession of Ages, as the Proceedings in the Courts of Equity have already done. For were you to look back into their Proceedings in former Ages,

* The Language of the Quakers.

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you will find, that the Garb they were dressed in at their first setting out; was as uncouth, and unbecoming, as that which our Modern Translators have now bestowed on our Proceedings at Common Law. And in the small Instance of alledging a Fact to be done on the fifth Day of May, in the fifth Year of the Reign of his present Majesty, that I believe will be granted me, carries with it as strong and conspicuous an Idea of what is meant thereby, as to say, in the sixth Year of the Lord the King; if so, why should not the former, which is the modern Mode of Speech, (and I dare say will be esteemed the smoothest, easiest, and best Way of Expression) be used, since it is equally intelligible with the latter? There are several other Instances, wherein I have ventured to change the Manner of Expression, strictly adhering to the true Sense, for the Sake of Grace and Comeliness in our Proceedings at Law.

I should not have undertaken this Task, but that I have lately with great Pains and Application fitted for the Press, a Collection of the best Entries that are in Latin, wherein solemn Resolutions have been given to make them Authentick and exemplary; such as are in Sander's, Lutwich's, Ventris's, Salkeld's, and the Modern Reports, added to many others that were lately adjudged. You will also have therein, after the Entries, the Reports of adjudged Cases in the Books relating to each particular Head, put in a methodical Order, and Notice taken of the several Acts of Parliament which

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which have in any wise altered the Common Law; and that it might not fail of being useful, I have added a Table of References to whatever other Precedents there are in the other Books of Entries, whereby the Substance of Townsend's and Cornwall's Tables are contracted, and brought into a narrow Compass, and adapted to each particular Title. And some worthy Gentlemen of the Profession have been pleased to commend my Performance therein, and encouraged me to this little Tract; the doing of which hath retarded the Publication of the Former, by reason the Printers were taken off to finish and complete the latter in Time; yet even the Importunity of my Friends would hardly (I believe) have engaged me in this following Performance, but that I plainly saw Persons were attempting to translate the Proceedings into what they would call English, who evidently never understood them while they were in Latin, and that induce me to this present Undertaking.

I shall think all the Labour and Pains I have taken herein sufficiently rewarded, if it shall be thought by the judicious Part of the Profession, that I have translated but tolerably well; and if it shall be said I have made any useful Discoveries of what before was not so fully understood, at least not by all the Profession, I shall esteem it Time well employed; yet as my good Intentions may not free the Whole from some Faults, I hope the Reader will let my good Will to serve my Country plead in their Excuse.

Tou

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You may be assured, the Forms of the Writs and Entries will receive advantageous Additions, when they have been under the Consideration of my Lords the Judges; and it may be long before they may be said to be fully settled.

I heartily wish, that the good Ends proposed by our Legislators in turning the Law into English, may have their desired Effect; but I much fear it, and dread the future Events that will follow every Person's reading the Law in English, and apprehending he knows the Purport and Meaning of what he reads, (which naturally attends the Observations of the Ignorant, who are never wanting to conceive a Self-sufficiency) and from thence lead themselves into expensive Suits, which they would otherwise have avoided. I doubt it will be wished, that that excellent Expression of Verfevicus in his Tract De legato, had made some Impression on the Minds of those that first designed the new modelling of our Laws. Est enim virtus constans & perpetuum Quid, quod Justitia appellatur, & quod perversis & depravatis hominum moribus & consuetudinibus, nec potest, nec debet, unquam mutari.

However, it would have been a Task worthy of so learned an Assembly as our late Law-givers, had they first translated all our Laws, and explained all the Etcetera's, and then have ordered the Practice of them, pursuant to such an authentick Model. It would have been indeed the Work of an Age for a single Man, but must have met with a quick Dispatch, when so wise and ju-

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It is not surprising that a Body of Men had employed themselves in so laudable an Undertaking, unless they had been wearied out in their Pursuit.

'Tis much to be wished that our Acts of Parliament were so clearly expressed, as to leave no Room for a Dispute about their proper Construction. The Practisers in Wales very much doubt, whether that Act of the Fourth of his present Majesty, made to render the Proceedings in English at Lady-Day next, was intended to extend to Wales; for the Act expressly mentions only that Part of Great Britain called England, and the Court of Exchequer in Scotland, and particularly in that Clause, which orders the Penalty for Offenders to be sued for only in Westminster-Hall, and the Court of Exchequer in Scotland. Indeed, that Act of the fifth of his present Majesty, which orders the Proceedings to be in English, in all Causes under ten Pounds, from the first of June last, does not confine it to that Part of Great Britain called England, and so, for ought I know, may be construed to extend to Wales; but what induces me to think, that even that Act was not intended to extend to Wales, are these two following Reasons; 1st, Because the Defendant has thereby eight Days after the Return of the Process to appear, and in Wales, the Proceedings are different from ours; for theirs are by Summons returnable at the Grand Sessions: Now if the Defendant has eight Days to appear and plead, the Plaintiff can have no Judgment at the Grand Sessions, as usual, because the Sessions

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sions continues at most not above six Days at a Place, and the Plaintiff would be delayed six Months longer than usual in his Suit. And I submit it, whether all the Judgments that were signed at the last several Courts of Grand Sessions, where the Defendant had not eight Days Time to appear and plead, were not irregular; that alone would have induced me to think, that even that Act was not intended to extend to Wales. But what weighs chiefly with me is this second Reason, That if it is thought a Mischief the Law Proceedings should continue in Latin, because the common People do not understand them, should they be in English, they would be equally in a Language unknown to the common People there: So that to provide a proper Remedy for them, must be to turn them into Welch.

I am heartily concerned for the Hardship the Practisers of the Law lie under, with regard to two Things directed by the Act first above mentioned; 1st, That the Character the Proceedings are to be written in, is to be such as the Acts of Parliament are usually ingrossed in, and at least as Close. 2^{dly}, That the Proceedings are not to be abbreviated, but all to be written in Words at Length, and the Offenders against both these Parts of the Act, to be punished with the Penalty of fifty Pounds. As to the first of these, for my own Part, I do not know what Character the Acts of Parliament are usually ingrossed in, and I dare say most of the Profession are alike ignorant of it, and how to come at a Specimen equally at a Loss.

It

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It cannot be said it was intended that no Body should know how to practise pursuant to this Act of Parliament, but those that are the Clerks of the Parliament, or those few others who necessarily are, or fortunately have been conversant with the Character and Manner, in which the Acts of Parliament are usually ingrossed. But this I am afraid will naturally follow, that Foreigners, and our Posterity, when they come to read this Act, will readily conclude, that at the Time when it was made, no Body could write a legible Hand, but the Clerks or Hackney Writers, who used to ingross the Acts of Parliament. Therefore I heartily wish, that the Profession would join in requesting, that the Act may be explained as to that Particular, or otherwise pray, that a Specimen be ordered, which may be a sure Guide to the Practisers, and then it will be their own Fault if they do not learn to write pursuant to the Intention of our Legislators. As to the second Point, let it be considered, what a severe Penalty is inflicted, if the Proceedings are not all written at Length, and unabbreviated; and if a Clerk should make an & stand for the Word and, or whatsoever else be the abbreviated Word, the Master by this Act must forfeit fifty Pounds; will not this put it in the Power of a Clerk at any Time to work the Ruin of his Master? and though a Man be never so careful to conform to this Act, how many Attornies are there, who know their Clients Defence to be weak, that will not stick to tell the Plaintiff's Attorney, that there are three
or

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or four abbreviated Words contrary to the Act, when in Truth perhaps, there are none; yet who then will have the Courage to proceed any further in that Cause, terrified with such an Assertion! will not the poor innocent Plaintiff be hereby greatly injured? and if any one should be so wicked, where there happens to be an Omission of a Word, to put in an abbreviated one for it, what a Flood of Perjuries will there follow to support it? I could mention a Multitude of Conveniencies and Benefits that have arisen to the trading Part of the Commonwealth, by the several late Acts of Parliament, made in the Alteration of the Common Law; but lest they should at the same Time be construed by others to be the greatest Inconveniencies that ever happened to the trading Part of the Nation, I shall here omit them.

I was desired to let the foregoing Preface, which was published with the first Impression, remain in this Edition; but then it is proper to take Notice, that since its Publication the Law hath been altered as to the Character in which the Proceedings are to be written, which by a Clause passed in a late Act, are to be in a common legible Hand, with the usual English Abbreviations; and Relief is granted to the Practisers in Wales.

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POCKET COMPANION.

The INTRODUCTION.

BEFORE I begin my following *King's Bench.*
Translation of the Proceedings
in the Courts of King's Bench
and Common Pleas, I beg leave
to say somewhat of a Suit or Controversy,
upon which an Action is founded, and of
the Action itself, with a short Account of
the Course of Proceedings in general.

The Commencement of a Suit in the *Of the Com-*
King's Bench is by Original or by Bill; If *menement*
by Bill, it is when the Party is suppos'd *of a Suit in*
to be already in Prison, and in the Custody *the King's*
of the Marshal; if by Original, it is the *Bench and*
same with the Common Pleas, where it *Common*
is always by Original, unless against the *Pleas.*
B Attornies

Attornies and Officers of the Court: And this Original issues out of the Court of Chancery, and is under the Great Seal of *England* returnable in the King's Bench or Common Pleas, as the Case is, and gives the Court a Jurisdiction to hold a Plea of that Matter; for till the Writ is returned, the Suit is not pending; and therefore upon an Original returned *Tarde*, that is to say, came so late to the Sheriff, that he could not possibly execute it, an *Alias* and *Pluries* shall issue out of the Court where the Original is returnable and return'd; but if no Return be made, the *Alias* and *Pluries* issue still out of the Court of Chancery. *Finch* 53.

*What gives
the Court a
Jurisdiction.
Writ not
returned.*

*An Alias
and Pluries.*

Of Pledges. This original Writ commands the Sheriff, that if the Plaintiff finds Pledges (that is) some Persons to be Sureties that he will prosecute his Suit, then to execute the Process, whereby to compel the Defendant to be before the Judges at the Day of the Return, to answer the Complaint laid against him by the Plaintiff, and the Form of the Writ is to that very Purpose, (*viz.*) If the Plaintiff makes you secure in prosecuting his Claim (or Suit) then Summon the Defendant, or put him to find Sureties, as the Action is, either in Debt, Trespass, or in Case.

*Summons
or Writ.*

And it is necessary to be known, that where the Action is by Way of Complaint

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plaint for not doing a Thing which ought to have been done, or for doing somewhat which ought not to have been done; in such Cases the Original runs thus,

*Actions
demandatory or
commandatory.*

Si A. fecerit te securum de Clamore suo Of the
prosequendo, tunc Summoneas, or Pone per Original.
vadios & Salvos Pleg'. If *A.* makes you
secure of prosecuting his Claim, then
summon the Defendant, or put him to
find Sureties, or safe Pledges, as the Case
is, without any Condition whatsoever.

But in Actions demandatory, where
somewhat is demanded to be render'd or
done, the Writ begins with these manda-
torial Words,

*Actions
demandatory.*

Præcipe A. quod reddat B. unum Me-
suagium, or Centum Solidos, or Quod per-
mittat B. habere Communiam pasturæ, &c.
as the Nature of the Demand is; which
is as much as to have said, Command (the
Defendant) that he render to the Plaintiff
so much Money, or, that he permit the
Plaintiff to enjoy his Common of Pasture,
as the Case is. And unless the Defendant
shall so do, that is, unless the Defendant
pays the Plaintiff his Money, or permits
him to enjoy his Common of Pasture.
And if the Plaintiff makes you secure in
prosecuting his Claim, then summon the
Defendant by good Summoners, &c.

And these Pledges, if they are not
found to the Sheriff, or in the Chancery
before,

*Pledges
where to
be found.*

before, yet they might be found in the Court where the Writ was returned.

*Servants of
the Court.*

But for Servants of the Court, or others, by the special Favour of the Chancellor, they might be admitted to find Sureties there, in the Court of Chancery, and then the Form of the Writ was, *Quia prædictus* (the Plaintiff) *fecit nos securum, &c. Summoneas.*

*A poor
Man that
can't find
Pledges.
Register
Brev. fol.
228. Br.
Pledges 29.*

And at Common Law, if a poor Man could not find Sureties, then he Pledged his Faith that he would prosecute; and the Form of the Entry was, *Et nisi fecerit, & prædictus* (the Plaintiff) *fecerit te securum de Clamore suo prosequendo, per Fidem suam, quia Pauper est, Summoneas.* Finch 53.

*How the
Writs must
be.*

And it was necessary at Common Law, (before the Barriers that hedg'd and kept out Ignorance were broken down, and Uncertainty and Confusion let loose upon the Laws of *England*) that Men, who undertook to transact the Affairs of Persons, that had any Claim of Property from, or Complaint against others, should be Men of Learning, as well as Integrity, and be well skill'd in the Forms and Methods of Proceedings, before they took upon them to protect and defend the Properties of the People, which next to Life and Liberty is the most valuable Jewel to be taken Care of, and preserved; and therefore

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fore the Wisdom of the Law required these following Rules to be observed in the Law Proceedings.

First, That a Writ should be brought in the proper County; as Debt, upon an Escape, Trespass for cutting down Trees, spoiling of Corn, Grass, &c. But Trespass for Battery, Taking Goods, &c. might be in any County, because transitory in its Nature.

A Writ to be brought in the proper County.

Secondly, That it was to be good Latin.

Latin.

Thirdly, That the Writ ought to express the Defendant by his Name of Baptism and Surname, his Place of Abode, his proper Addition, (*viz.*) Dignity, Profession, Trade, Mystery, &c.

Defendant's Christian and Surname to be certain.

Fourthly, If there are more Men of the same Name, that a proper Distinction be made to shew whether the Defendant was *John Stiles* the Elder, or *John Stiles* the Younger, and such like.

Distinction of Senior and Junior.

Fifthly, That all the Proceedings should be of a-piece, and stand as Monuments of Regularity to successive Ages, and that there should be no Variance between

B 3

the

*No Vari-
ance.*

the Original and the Declaration,
nor between the Original, Decla-
ration, and the Judgment.

*Of the Pa-
role.*

And having said thus much of the Nature of an Action, and of the Writ, it is proper to mention somewhat of that which brings the Matter to Judgment, which consists of the Pleadings, and the intermediate Process, until Judgment; which Pleadings were at Common Law called the Parole, consisting of two Parts, viz. the Declaration and the Pleadings.

*Of a De-
claration.*

And here somewhat of a Declaration.

A Declaration is the Instrument containing the Complaint of the Party, comprehending the Writ, and ought, in order to give the Defendant an Opportunity to make a proper Defence, to contain Certainty, according to a general Intent, as to the Time, Place and Quantity.

*Declara-
tions to be
good, tho'
not in pro-
per Terms.*

By the 36 of Ed. III. cap. 15. It is ordained, that a Count, which is the same with a Declaration, shall be good, if it bath Matter of Substance, though the Terms are not perfectly apt and proper.

*Action con-
fessed.*

If the Defendant confesses the Action, then the Entry is; and the said C. says he can't deny the Action of the said A. but that he the said C. owes him the Money; therefore it is considered that,
Etc.

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Et c. and if he says nothing at all to the Nil dicat.
 Action, then the Entry is thus, *if in Case*;
 and the said C. by N. B. his Attorney, *Of the De-*
 comes and defends the Force and Injury, *sence.*
 when and where the Court will please to
 consider thereof, and the Damages and *The Judg-*
 whatever else he ought to defend; and saith *ment.*
 nothing to bar or stop the Action of the
 said E. whereby the said E. remains unde-
 fended by the said C. and by Reason thereof
 the said E. ought to recover his Damages
 occasioned by the Premisses; but because it
 is unknown what Damages, Et c. Therefore *In Case*
 a Writ of Inquiry is awarded to assess the *where In-*
 Damages before the Court awards Execu- *quiry is to*
 tion; but in Debt, because the Debt is in *be award-*
 its Nature certain, an Execution imme- *ed.*
 diately follows the Judgment. *In Debt.*

And it may not be amiss to take No- *To clear the*
 tice of one Thing which falls under our *Entry from*
 Consideration, in that it seems at first a *the Imputa-*
 little odd, that a Person shall come into *tion of Ab-*
 Court to defend the Matter, and say no- *surdity.*
 thing at all when he is there, so that it
 might be objected that the introductive
 Words might be omitted (to wit, that
 the Defendant comes and defends the
 Force and Injury, when, Et c.)

But in Order to reconcile this Matter,
 and clear the Entry from any Imputation
 of Absurdity, I shall make these few Ob-
 servations:

1st, That in order for the Judges to pronounce any Judgment, it is necessary that the Matter and the Parties appear to be before the Court, and that they appear so to be in a proper Manner.

And when the Defendant appears, the Nature of his Appearance is such, that he undertakes to defend the Plaintiff's Action, and to be ready at the proper Times and Places appointed by the Court to proceed on the Matter in Variance.

2^{dly}, When a Rule therefore is given for the Party to plead, and he does not, the Law frames this Entry for the Defendant, Shewing that he was in Court, at the Day that he ought to have been, to defend the Force and Injury. But when the Party was called upon to give in his Defence, the Court finding that he had nothing to say against the Plaintiff's Action, then caused it to be entred, that the Defendant comes and defends, &c. and says nothing to bar or stop the Plaintiff's Action.

*Why it is
said that
he defends
the Force
and In-
jury.*

C. Lit.
127.

For without that Defence, the Defendant is a Stranger to the Suit, and in no Condition to plead or receive Judgment; and the Reason why the Expression is (*comes and defends*) and not *came and defended*, is, that all Entries are supposed to be present Memorandums of what is transacted at that very Time, and

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and not what had been done; and therefore in the Course of Proceedings they are set down *eo Instanti* of their Existence.

If the Defendant pleads, it must be in Abatement or in Bar, and as to Pleas in Abatement or in Bar, it will be taking up too much Place in this little Treatise, (which is designed for another Purpose) to take Notice thereof in such Manner as it ought to be treated of; therefore I shall omit it, and shall only in general take Notice that the Effect of the Pleadings is, that an Issue is at last to be joined upon a Matter that the Parties will have tried, which will make an End of the Controversy between them.

And this Issue is in Fact, or in Law; ^{What Pleas are to be pleaded.} an Issue in Fact, is properly when a Fact is denied by the one, and maintained by the other; and the Plaintiff, if he takes Issue, prays that it may be tried by the Country; and if the Defendant takes Issue, he puts himself on his Country.

After which, if any Insufficiency of Pleading appears in the Record, whether Issue be joined on it or no (it is called a *Jeofaile*;) where either Party might replead, so that the Jury ready to try the Issue were discharged, and a Repleader began where the Defect was, &c.

As if the Bar had been good, and the Replication ill, the Plaintiff should begin

gin at his Replication; if the Plea and Replication be good, and the Rejoinder ill, then the Entry begins at the End of the Replication; if the Issue be taken on a Matter apparent of Record, it must be tried by the Record.

*Matter of
Fact how
to be tried.*

If on a Matter of Fact, it is to be tried by a Jury, which is to consist of twelve free and lawful Men, and therefore a Verdict by eleven is void; and what is meant by *free* and *lawful*, is, that they should not be Villeins, which signifies as much as Slaves; and by *lawful*, that is Subjects, and not Aliens, Men within the Verge and Protection of the Laws, and not any outlawed.

By whom.

A Jury.

Summoned:

The Jury are made to come by a Writ of *Venire Facias*, commanding the Sheriff to cause them to be before the Justices at the Day of the Return; and thereto he returns a Panel of the Names of such Persons as he hath summoned; and if they don't appear at the Day, a *Habeas Corpora* issues, and upon that a *Distingas*, thereby taking the Issues and Profits of their Lands till they do appear: When they do appear at the proper Day, both Parties are allowed Challenges to the Array or to the Poll.

*How to be
made to
appear.*

And in the King's Bench, the first Process made out upon the Return of the
Venire,

Venire, is a *Disfringas*; but in the Common Pleas, the next Process to the *Venire* is a *Habeas Corpora*.

A Challenge to the Array is, when the Jury is not indifferently empanelled. Of a Chal-
lenge to the
Array.

A Challenge to the Poll is, when some of the Jury are not Persons in Law meet to try the same; and this Challenge to the Poll, it is said, ought to be before the Panel is perused. To the Poll.

And this Examination of the Jurymen, as to his being qualified or disabled to be upon that Jury, is tried upon what is called a *Voyer Dire*, which is an Examination by the Court. How Jury-
man to be
examined.

And he that challenges the Array cannot challenge the Poll without shewing a sufficient Cause, which is to be tried immediately. Chal. Poll
not after
Chal. Ar-
ray.

And after challenging a Jurymen for one Cause, he shall not be challenged for another Cause. Not to be
challenged
for two
Causes.

If sufficient of the Panel do not appear, then the Party is intitled to a *Tales*, which is always moved for by the Plaintiff's Counsel; but now since the late Act of Parliament of the 3d of King George the Second, there is seldom any want of Jurors.

If the Plaintiff will not appear when he is called, and the Jury have the Matter in Charge, he is nonsuited, and the De- When
Plaintiff
nonsuited:

endant is dismissed *sine Die*, (*Anglice*) put without any Day to be appointed for his Appearance again.

Issue at Law.

An Issue at Law (which is called a Demurrer) is, when admitting the Matters to be true, every of them shall depend upon the Judgment of the Court, and therefore the Trial is by the Judges.

And it is joined upon an Exception to the Count or Writ, which is a Demurrer; and it is either in Abatement, whereby it is alledged, That the Plaintiff ought to have a better Writ; or else it is in Bar, whereby the Defendant makes it appear that the Plaintiff, hath failed in his Action, or in the Manner of his Complaint; or if a Demurrer be by the Plaintiff he makes it appear that the Defendant fails in a good Defence, either in the Matter or the Manner thereof, so that the Demurrer may be either to the Declaration by the Defendant, or to the Plea of the Defendant by the Plaintiff, or to the Replication by the Defendant, and so on to the rest of the Pleadings by the Plaintiff or Defendant.

Judgment and Execution.

That which determines the Action is Judgment and Execution, which follows either a Nonsuit or Verdict; for both Parties are intitled to Execution, *viz.* the Defendant

INTRODUCTION.

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Defendant upon a Nonfuit, and the Plaintiff upon a Verdict.

Having given this Account of the Commencement of a Suit, and the Method of Proceeding, I now come to the Purpose for which this Treatise was intended.

The proper Suits in the King's Bench, were originally Suits for Offences, and Matters that were *contra Pacem*, which is against the King's Peace: But Matters of Contract, Debts, and Pleas of Land were not triable there; but an Action upon the Case is only an Action of Trespafs in its Nature, and called an Action upon the Case, because the Writ is to be framed and adapted according to the Nature and particular Circumstances of the Case; of which the Court of King's Bench might hold Plea by Original.

Of Suits in the King's Bench.

Properly in Trespafs.

But in Debt, they can't have an Original out of Chancery, returnable there, to compel a Person to appear in such Action; yet by filing a Bill against the Defendant, thereby supposing him to be *in Custod. Mar.* that is in Prison, you may declare in Debt as well as in Trespafs, or on the Case; for though you could not have such Process to compel a Man to appear there in such Action; yet when he is there, he shall rather be charged there with such Action, than that the Marshal shall have his Prisoner taken from him to be charged in another Court.

How they take Cognizance of Debts.

The

King's
Bench.

A Bill of
Middle-
sex.

*The Proceedings in the Court of
King's Bench.*

Middlesex, The Sheriff is commanded, that he take *A. B.* if he is to be found in his Bailiwick, and safely keep him, so that he have his Body before our Sovereign Lord the King at *Westminster*, on *Wednesday* next after the *Octave* of *St. Hilary*, to answer to *C. D.* of a Plea, or (in an *Action*) of *Trespass* * and that he have there, at the same Time, this Precept.

By Bill *Ventris.*

*If it requires
Bail.*

* And also to a Bill of the said *C. D.* to be exhibited against the said *A.* according

to the Custom of His Majesty's Court before himself; for a *Debt* of ten Pounds, and that he have there this Precept.

*If in Trespass
for taking Goods.*

* For taking and carrying away Goods and Chattels of the said *C.* to the Damage of twenty Pounds.

Detinue.

* For detaining the Goods and Chattels of the said *C.* to the Value of forty Pounds.

Trover.

* For converting and disposing of Goods and Chattels of the said *C.* to the Value of forty Pounds.

Covenant.

* For breaking of Covenants to the Damage of the said *C.* sixty Pounds.

Assumpsit.

* And also to a Bill of the said *C.* for twenty Pounds, upon Promises and Undertakings.

ff. A Bill

Pocket Companion.

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It. A Bill for *A. B.* against *C. D.* returnable on *Wednesday* next after the *Octave* of *St. Hillary.*

G. Woodcraft.

Somerſet, to wit: A *Latitat* for *A. B.* against *C. D.* and *E. F.* returnable on *Wednesday* next after three *Weeks* of *St. Michael.*

Woodcraft. It is not necessary to mention in the Instructions for a Bill of Middlesex or Latitat, that there is no Entry of it made, nor has it been thought necessary to mention in the Instructions the Sum sworn to, only by writing B. over the Defendant's Christian Name, and M. over the Surname, or by drawing a Line under the Defendant's Name, so

If it be Bailable, it will be proper to insert in the Place where the Asterisks are, as above, the Sum sworn to, thus, (sworn to twenty Pounds.)

George the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, and so forth, to the Sheriff of Norfolk, Greeting: Whereas we lately commanded our Sheriff of Middlesex, that he should take *C. D.* and *E. F.* if they should be found in his Bailiwick, and safely keep them, so that he might have their Bodies before Us at Westminster at a certain Day, now past, to answer to *A. B.* in an Action of Trespals; and also to a Bill of the said *A.* to be exhibited against the said *C.* according to the Custom of our Court before us, for a Debt of ten Pounds. And our Sheriff of Middlesex made a Return to us at that Day, That the said *C.* and *E.* were not to be found in his Bailiwick; whereupon, on the Behalf of the said *A.* it is testified in our Court before us, that the said *C.* and *E.* lusk and wander up and down in your County; therefore we command you, That you take them, if they are to be found in your Bailiwick, and safely keep them, so as you have their Bodies before us at Westminster, on Wednesday next after three Weeks of *St. Michael,* to answer to the said Action.

show it
bailable;
but as the
very Sum
is to be in-
dorsed on
the Writ,
I think it
is very
proper the
Sum
sworn to
should ap-
pear in
the Instru-
ctions.

Action and Bill of the said *A.* and have you there at the same Time this Writ. Witness *Robert Lord Raymond* at *Westminster*, the 28th Day of *June*, in the sixth Year of our Reign.

Ventris.

The several other Accertains for Bail, to be varied as before; only say instead of, and also to a Bill of the said *A.* to be exhibited against the said *C.* according to the Custom of his Majesty's Court, before himself, you must say, according to the Custom of our Court before us.

If it be on a *Qui tam*, then you say, To answer to *A. B.* who sues as well for us as for himself in this Cause.

A Common Bail-Piece.

Of the Term of *St. Michael*, in the Sixth Year of the Reign of King *George the Second*.

London (to wit) *A. B.* having been served with Process, is delivered to Bail (that is to say)

To *John Doe* of *London*,
Yeoman, and
Richard Roe, of the same
Place, Yeoman,

J. Cock, At-
torney.

at the Suit of
C. D.

Inasmuch

Pocket Companion.

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Inasmuch as the Taking the Body is now dispens'd with by Act of Parliament, where the Debt is under ten Pounds, I think it would be more Congruous to omit the Words, upon an Arrest, and make it as above in common Bail-Pieccs.

A Special Bail-Piece.

Of the Term of St. Michael, in the Sixth Year of the Reign of King George the Second.

Somerſet (to wit) A. B.

is delivered to Bail upon an Arrest to E. F. of the Parish of Froome in the ſaid County, Yeoman, and William Aſburſt of Minehead, in the ſaid County, Gent.

Fotherly
Baker At-
torney.

at the Suit of
Timothy Babb,

And I ſub-
mit it whe-
ther tradi-
tur in Bal-
livum ſig-
nifies any
more, than
that the
Deſendant
is bailed,
and whe-
ther this
Form un-
derneath
does not
convey a
more ad-
equate
Idea of
what is
meant
thereby.
A. B. is
bailed,
upon an
Arreſt by
E. F. &c.
and the
ſame in
the com-
mon Bail-
Piecc, A. B.
having
been ſerv'd
with Pro-
ceſs, is
bailed, by
John Doe,
If &c.

There is no Difference between the Bail-Piece upon a Habeas Corpus and a Capi, only you ſay as above, is delivered to Bail upon a Habeas Corpus to E. F. &c.

If it is a Country Bail-Piece, thereon inſert the Caption (viz.) taken and acknowledged the 10th Day of April, in the Year of our Lord 1732, at Froome, in the County aforeſaid, before G. S. a Commissioner, &c. where the Aſterisk is placed.

If &c.

The Attorney's

If on a Certiorari you only say, is delivered to Bail upon a Certiorari, or a Writ to cause Proceedings to be certified.

Of Declarations.

Declarations in the King's Bench and Common Pleas are alike in Substance, only it is said, That in Declarations in the King's Bench they describe the Year by the Year of the King, and in the Common Pleas by the Year of our Lord: And there are Pledges to be inserted at the End of the Declaration in the King's Bench where it is by Bill, in this Manner,

<i>G. W. for the Plaintiff.</i>	}	Pledges	}	John Doe,
		for pro-		
<i>H. B. for the Defendant.</i>		secuting		Rich. Roe.

But there are no Pledges now appear in the Declarations in the Common Pleas, unless against Persons privileg'd, because the Pledges supposed to be taken, are taken upon the Original, and no more of the Original is recited there, than by shewing that the Defendant was attached to answer to the Plaintiff in an Action of Trespass upon the Case, *and so forth*; tho' anciently they recited all the Tenour of the Original Writ, so that the Pledges are understood with the rest, under the Words, *and so forth*.

The Declaration.

Norfolk, ff. A. B. Complains of C. D. being in the Custody of the Marshal of the Marshalsea, of our Sovereign Lord the King, before the King himself; for that whereas the said C. D. on the 10th Day of March, in the fifth Year of the Reign of our Sovereign Lord George
the

he Second, King of *Great Britain*, and so
orth, at *Thetford*, in the County aforesaid,
was indebted to the said *A. B.* in 50 *l.* of law-
ful Money of *Great Britain*; for the like Sum
of Money by him the said *C.* before that Time
had and received to the Use of the said *A.* and
being so indebted, the said *C.* afterwards (that
is to say) the same Day and Year, at *Thetford*
aforesaid, in the County aforesaid, in Consid-
eration thereof, then and there undertook and
faithfully promised, that he the said *C. D.*
would well and truly content and pay to the
said *A.* the said Sum of 50 *l.* whenever after
he should be thereto required.

*For Money
had and
received.*

And whereas the said *C.* afterwards (that is
to say) the same Day and Year, at *Thetford*
aforesaid, was indebted to the said *A.* in an-
other Sum of 50 *l.* of like lawful Money of
Great Britain, for the like Sum of Money,
laid out and expended by the said *A.* before
that Time, at the special Instance and Request
of the said *C.* for and to the Use of the said
C. And being so indebted, the said *C.* after-
wards (that is to say) the same Day and Year,
at *Thetford* aforesaid, in Consideration thereof
undertook and faithfully promised the said *A.*
that he would well and truly content and pay
him the said 50 *l.* last mentioned whenever af-
ter he should be thereto required.

*For Money
laid out
and ex-
pended.*

Was indebted to the said *A.* in the further
Sum of 50 *l.* of like lawful Money for the like
Sum before that Time, by the said *A.* lent to
the said *C.* at his special Instance and Request:
And being so indebted, &c.

*For Money
lent.*

Was indebted to the said *A.* in the further
Sum

Indebita-
tus Af-
sumptit
for Goods
sold and
delivered.

Quantum
Valebant
for Goods
sold and
delivered.

Ind. Ass.
for Meat,
Drink,
Washing
and Lodg-
ing.

Sum of 60*l.* of like lawful Money of *Great Britain*, for divers Goods, Wares, and Merchandizes of the said *A.* by him before that Time sold and delivered to the said *C.* at his special Instance and Request; and being so indebted, &c.

And whereas the said *A.* afterwards (that is to say) the same Day and Year, at *Thetford* aforesaid, at the special Instance and Request of the said *C.* sold and delivered to him divers other Goods, Wares and Merchandizes of him the said *A.* He the said *C.* in Consideration thereof, then and there undertook and faithfully promised, that he the said *C.* would well and truly pay to the said *A.* so much Money, as such Goods, Wares, and Merchandizes so sold and delivered to the said *C.* were reasonably worth at the Time of the Sale and Delivery thereof, whenever after he should be thereto required. And the said *A.* in fact saith, That the said Goods, Wares, and Merchandizes, so sold and delivered to the said *C.* by him the said *A.* as above, were, at the Time of the Sale and Delivery thereof, reasonably worth the further Sum of 50*l.* of like lawful Money, (that is to say) at *Thetford* aforesaid, of which the said *C.* afterwards (to wit) the same Day and Year, had Notice.

Was indebted to the said *A.* in another Sum of 90*l.* of like lawful Money, for Meat, Drink, Washing, and Lodging by the said *A.* for the said *C.* at his like special Instance and Request, before that Time found and provided. And being so indebted, &c.

And whereas afterwards (to wit) the Day and Year abovesaid, at *Thetford* aforesaid, in
Con-

Consideration that the said *A.* before that Time, at the special Instance and Request of the said *C.* had found and provided for the said *C.* other sufficient Meat, Drink, Washing, and Lodging for a long Time, (to wit) for the Space of Twelve Months then past, at *Tketford* aforesaid; he the said *C.* in Consideration thereof, then and there undertook and faithfully promised the said *A.* That he the said *C.* would well and truly pay to the said *A.* so much of lawful Money of *Great Britain*, as the said *A.* reasonably deserved to have of the said *C.* for the said Meat, Drink, Washing, and Lodging, so found and provided for the said *C.* as above, whenever after he should be thereto required. And the said *A.* in fact says, that he reasonably deserved to have of the said *C.* for the said Meat, Drink, Washing, and Lodging so found and provided by the said *A.* for him the said *C.* as above, another Sum of 90 *l.* of lawful Money of *Great Britain*, of which the said *C.* afterwards (to wit) the same Day and Year, at *Tketford* aforesaid, had Notice from the said *A.*

A Quantum Meruit for Meat, Drink, Washing, and Lodging.

Was indebted to the said *A.* in the Sum of 100 *l.* of like lawful Money for certain Work and Labour by the said *A.* in his Art and Trade of a Carpenter, before that Time done and performed for the said *C.* at his special Instance and Request, and for divers Materials and necessary Things found and provided by the said *A.* in and about such Work, at the like special Instance and Request of the said *C.* And being so indebted, &c.

Ind. Ass. for Work, Labour, and Materials.

As in a *Quantum Meruit* for Meat, &c. to the Words, At the Request of the said *C.* had

Quantum Meruit.

*for Work,
Labour,
and Mate-
rials.*

had done and performed for the said *C.* at his like special Instance and Request, certain other Work and Labour in his the said *A.*'s Art and Trade of a Carpenter, and had at the like Instance and Request of the said *C.* found and provided divers other Materials and Things used and imployed in and about the said Work and Labour last mentioned. He, the said *C.* then and there, in Consideration thereof, undertook and faithfully promised the said *A.* that he would content and pay the said *A.* all such Sums of Money, as the said *A.* reasonably deserved to have for such Work and Labour last mentioned, done and performed by the said *A.* for the said *C.* and for such Materials about the same, found and provided by the said *A.* as abovesaid, whenever after he should be thereto required. And the said *A.* in fact saith, That he reasonably deserved to have from the said *C.* for the said Work and Labour last above-mentioned, done and performed for the said *C.* by him the said *A.* the Sum of 50*l.* of like lawful Money. And that for the necessary Materials and Things found and provided by the said *A.* in and about such Work and Labour, he reasonably deserved to have another Sum of 50*l.* of like lawful Money, of which, &c. *(as in other 2. Mer.)*

*Ind. Ass.
for a Cure
of the De-
fendant's
Daughter.*

Was indebted to the said *A.* in the further Sum of 20*l.* of like lawful Money for Curing and Healing one *F. D.* Daughter of the said *C. D.* at the special Instance and Request of the said *C.* of divers Diseases and Infirmities, which the said *F.* before that Time laboured under. And being so indebted, &c.

Had healed and cured *F. D.* a Daughter of *Quantum*
 he said *C. D.* of divers other Infirmities and *Meruit*
 Diseases, which the said *F. D.* before that *for the*
 Time laboured under. The said *C. D.* then *same.*
 and there, in Consideration thereof, undertook
 and faithfully promised, That he the said *C.*
 would well and truly pay to the said *A.* all
 such Sums of Money, as he the said *A.* reason-
 ably deserved for the same. And the said *A.*
 in fact saith, That he reasonably deserved to
 have from the said *C.* another Sum of 20*l.*
 for the last mentioned Cure, made, done and
 performed as above, &c.

And whereas the same *A.* and *C.* afterwards *Insimul*
 (to wit) the same Day and Year at *Thetford* *Compu-*
 aforesaid, stated Accounts between them of *taster.*
 and concerning divers Sums of Money, be-
 fore that Time due to the said *A.* from the
 said *C.* and then in Arrear and unpaid: And
 upon such Account stated, the said *C.* was
 then and there found to be in Arrear to the
 said *A.* in the Sum of 100*l.* of like lawful
 Money: And being so found in Arrear, the
 aforesaid *C.* in Consideration thereof (to wit)
 the same Day and Year at *Thetford* aforesaid,
 undertook, &c.

Nevertheless, the said *C.* not regarding his
 said several Promises and Undertakings, made
 in the Manner as above; but contriving, and
 fraudulently intending, craftily and subtilly to
 deceive and defraud the said *A.* in this Par-
 ticular, hath not paid the said several Sums,
 or any Part thereof, to the said *A.* nor in any
 Manner howsoever made him Satisfaction for
 the same, although the said *C.* hath been there-
 to required by the said *A.* afterwards (to wit)

on

Had

on the tenth Day of *May*, in the fourth Year above-mentioned, and often afterwards at *Thetford* aforesaid, in the said County. But he, the said *C.* hitherto hath, and still doth refuse so to do: Whereupon he the said *A.* saith, That he is thereby injured and endamaged to the Value of 300*l.* and therefore brings his Suit, *and hath good Proof of the Premises, when the Court will consider thereof.*

For Declarations on Promissory Notes and Bills of Exchange, see hereafter among the Declarations in the *Common Pleas.*

*In Trover
for Cattle.*

A. B. complains of *C. D.* being in the Custody of the Marshal, *and so forth*, for that the said *A. B.* on the first Day of *March*, in the fifth Year of the Reign of His present Majesty, our Sovereign Lord *George* the Second, King of *Great Britain, &c.* at *London*, in the Parish of *St. Mary le Bow*, in the Ward of *Cheap*, was possessed of divers Cattle (that is to say) of an Ox, a Bull, and a Cow of the said *A.* of the Price of 40*l.* as of his own Cattle, and being so possessed, lost his said Cattle out of his Hands and Possession, which said Cattle afterwards (to wit) on the Day and Year, and at the Place aforesaid, came to the Hands and Possession of the said *C. D.* who found the same; nevertheless the said *C. D.* knowing the said Cattle to be the Cattle of the said *A. B.* and of Right to belong and appertain to him the said *A. B.* but contriving and fraudulently intending craftily and subtilly to defraud the said *A. B.* of his said Cattle, although often requested, hath not delivered

delivered the same to the said *A. B.* but afterwards (to wit) on the said tenth Day of *December* in the said Year, converted and disposed of the said Cattle to his own Use at *London* aforesaid, in the said *Parish* and *Ward*, to the Damage of the said *A. B.* 60*l.* and therefore the said *A. B.* brings his Suit, and hath good Proof of the Premises, when the Court will consider thereof.

A. B. complains of *C. D.* otherwise called *C. D.* of the Parish of *St. Martin's in the Fields*, in the County of *Middlesex*, Gentleman, being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, being before the King himself, of a Plea, that he render to him one hundred Pounds of lawful Money of *Great Britain*, which he owes to, and unjustly detains from him, forasmuch as whereas the said *C.* on the first Day of *June*, in the sixth Year of the Reign of His present Majesty *George the Second*, King of *Great Britain*, &c. at the said Parish of *St. Martin's in the Fields*, in the County aforesaid, by his certain Writing Obligatory, commonly called a *Bond*, sealed with the Seal of the said *C.* and shewn here to (this) His said present Majesty's Court (the Date whereof is the same Day and Year last above-mentioned) acknowledged himself held and firmly bound to the said *A.* in the said one hundred Pounds, to be paid to the said *A.* whenever he should be thereto required. Nevertheless the said *C.* although often required to pay the same, hath not paid to the said *A.* the said one hundred Pounds, or any Part thereof;

Declaration upon a Bond.

Or in the Custody of the Sheriff of the County of Norfolk, if against a Prisoner in Custody.

The Attorney's

of; but hath hitherto refused, and still doth refuse so to do; whereupon the said *A.* saith, that he is injured and endamaged to the Value of 20*l.* and therefore brings his Suit, and hath good Proof of the Premises, when the Court will consider thereof.

*Debt upon
a Judg-
ment.*

J. D. late of *London*, Mercer, was summoned to answer to *John Denton* in an Action that he render to him 50*l.* which he owes to, and unjustly detains from him, and whereupon the said Plaintiff, by *J. M.* his Attorney, saith, That the said *J. D.* in the Term of *St. Michael*, in the fifth Year of the Reign of His present Majesty, in His said Majesty's Court, before himself at *Westminster*, in the County of *Middlesex*, by Consideration of the said Court recovered against the said *J. D.* 50*l.* which was awarded to the said *J. Denton*, for his Damages, which he had sustained, as well by reason of a certain Trespass upon the Case, lately done to the said *J. Denton*, by the said *J. Denman*, as for his Expences and Costs about his Suit in that Behalf by him laid out, whereof he is convicted, and so forth; as by the Record and Proceedings thereof in the same Court, before his present Majesty, may appear; and the said *J. Denton* sued out no Execution upon that Judgment, by which an Action accrued to the said *J. Denton*, to require and have from the said *J. Denman* the said 50*l.* nevertheless the said *J. Denman*, although often requested, hath not rendered to the said *J. Denton* the said 50*l.* but hitherto altogether hath, and still doth, refuse so to do; whereupon the said

J.

J. Denton saith he is injured and endamaged to the Value of 10*l.* and therefore brings his Suit, and bath good Proof of the Premises, when the Court will consider thereof.

Kent (to wit) *W. P.* complains, of *H. A.* A Declaration for Rent in Arrear of a Lease Parcel, and likewise for Chaff bought. in the Custody of the Marshal, &c. in an Action, that he render to him 7*l.* 6*s.* 8*d.* of lawful Money of *England*, which he owes to, and unjustly detains from him, for that whereas the said *W.* the last Day of *September*, in the fifth Year of the Reign of His present Majesty, at *Plumstead*, in the County aforesaid, did demise, grant, and to farm let to the said *H.* two Acres and an Half of Reed Land, with the Appurtenances, Parcel of a certain Piece of Land, called the *Maggot*, and six Acres of Pasture, called *Brandonsburg*, with the Appurtenances, situate, lying, and being in *P.* aforesaid, in the County aforesaid; to have and to hold to the said *H.* and his Assigns, from the Feast of *St. Michael* the Archangel, then last past, for one whole Year then next ensuing, and so from Year to Year, so long as both the said Parties should agree; Yielding and paying therefore yearly, and every Year, to the said *W.* for the Tenements aforesaid, with the Appurtenances (which the said *H.* holds and enjoys) 8*l.* of lawful Money of *Great Britain*, at the Feast of the Annunciation of the Blessed Virgin *Mary*, and *St. Michael* the Archangel, in every Year by equal Portions. By Virtue of which said Demise the aforesaid *H.* held and occupied the said Tenements, with the Appurtenances aforesaid, from the Feast of *St. Michael* the Archangel,

angel, for two whole Years from thence next ensuing, and six Pounds of the aforesaid 7 l. 6 s. 8 d. to be rendred for one Year, at the End of the said Feast of St. *Michael* the Archangel, in the fifth Year of His said present Majesty, was and to the said *W.* stood in Arrear, and unpaid by the said *H.* by which Means this Action hath accrued to the said *W.* against the said *H.* for the said six Pounds of the said 7 l. 6 s. 8 d. and also the aforesaid *H.* afterwards (to wit) on the tenth Day of *December*, in the fourth Year of the Reign of His said present Majesty, at *P.* aforesaid, in the County aforesaid, bought of the said *W.* seventeen Quarters of Chaff for 26 s. and 8 d. Residue of the aforesaid 7 l. 6 s. 8 d. which said several Sums, in the Whole, amount to the said Sum of 7 l. 6 s. 8 d. Nevertheless, the said *H.* though often requested thereto, *and so forth*, by the said *W.* the said *H.* has not yet paid, but still doth refuse to pay the same, to the Damage of the said *W.* 20 l. And therefore he brings his Suit, &c.

Declaration
upon the
Assignment
of a Bail
Bond to the
Plaintiff,
according
to the Sta-
tute of the
4th and
5th of Q.
Anne.

London (—) *A. B.* Gent. Assignee of *John Fuller* Esq; and *Sir Isaac Shard* Kt. Sheriffs of *London*, according to the Form of the Statute in such Case made and provided, complains of *E. F.* otherwise called *E. F.* of (*such a Place, as in the Bond*) being in the Custody of the Marshal of His Majesty's *Marshalsea*, Before the King himself, of a Plea or in an Action, that he render to him One hundred Pounds of lawful Money of *Great Britain*, which he owes to, and unjustly detains from him for this Cause

(that

(that is to say) that whereas the said *A.* after the first Day of the Term of the Holy *Trinity*, in the Year of our Lord One thousand seven hundred and six (that is to say, on the twentieth Day of *June*, in the Year of our Lord One thousand seven hundred and thirty-one) had prosecuted out of His Majesty's Court, held before the King himself at *Westminster* (the said Court being at that Time held there) against the said *E.* His said Majesty's Writ of *Lasitat*, directed to the then and now Sheriffs of *London*. By which said Writ, our said Sovereign Lord the King commanded the Sheriffs of *London* aforesaid, That they should take the said *E.* if he was to be found in their Bailiwick, and safely keep him, so that they might have his Body before our said Sovereign Lord the King at *Westminster*, on *Monday* next after three Weeks from the Feast of *St. Michael* then next following, to answer to the said *A. B.* of a Plea of *Trespas*; and also to a Bill of the said *A.* against the said *E.* for a Debt of Fifty Pounds, to be exhibited according to the Custom of His said Majesty's Court, held before the King himself. Which said Writ afterwards, and before the Return thereof, (that is to say) on the twenty-third Day of *June*, in the Year of our Lord One thousand seven hundred and thirty-one, was delivered to the said *John Fuller* Esq; and Sir *Isaac Shard* Kt. then and now Sheriffs of *London* aforesaid, at *London*, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, to be executed in due Form aforesaid. By Virtue therefore of which said Writ, the said *John Fuller*, and Sir

The Attorney's

Isaac Shard, then and now Sheriffs of *London* aforesaid, afterwards and before the Return of the same (that is to say) the Day, and Year last above-mentioned, at *London* aforesaid, in Parish and Ward aforesaid, took and arrested the said *C. D.* and had him the said *C.* in their Custody: And having him so there in their Custody by Virtue of the said Writ afterwards (that is to say) on the said twenty-third Day of *June*, in the said Year of our Lord, One thousand seven hundred and thirty one, the said *John Fuller*, and Sir *Isaac Shard*, Sheriffs of *London* aforesaid, took Bail for the Appearance of the said *E.* according to the Tenor of the said Writ; and thereupon the said *E.* afterwards (that is to say) the same Day and Year last above mentioned, at *London* aforesaid, in the said Parish and Ward, by a certain Writing Obligatory (commonly called a *Bail-Bond*) sealed with his Seal, and shewn here to this Court (the Date whereof is the same Day and Year above) became bound to the said *John Fuller*, and Sir *Isaac Shard*, then and now Sheriffs of *London* aforesaid, in One hundred Pounds of good and lawful Money of this Kingdom of *Great Britain*, to be paid to the said *John Fuller*, and Sir *Isaac Shard*, Sheriffs of *London* aforesaid, whenever he should be thereto required, with a Condition there under written, That if the said *E.* should appear before our Sovereign Lord the King at *Westminster*, on *Wednesday* next after fifteen Days from *St. Martin* then next following, to answer to the said *A. B.* of a Plea of *Trespasse*, and also to a Bill of the said *A.* to be exhibited

exhibited according to the Custom of his said Majesty's Court, before the King himself, against the said *E.* for 50*l.* that then the said Obligation should be Void and of none Effect; otherwise to be and remain in full Force, Power, and Virtue, as by the said Bond and Condition, Relation being thereto had, more fully may appear. And the said *A.* further says, That the said *E.* did not appear before our Sovereign Lord the King at *Westminster*, on the said *Wednesday* next after fifteen Days from the Day of *St. Martin*, according to the Tenor of the said Writ, whereby the said Bond became forfeited to the said *John Fuller* and *Sir Isaac Shard*, as Sheriffs of *London* aforesaid. And the said Sheriffs afterwards (that is to say) on the twentieth Day of *December*, in the said Year of our Lord One thousand seven hundred and thirty-one, at *London* aforesaid, in the said Parish and Ward, at the Request, Costs, and Charges of the said *A.* by a certain Indorsement in Writing, made and indorsed on the said Bond (bearing Date the same Day and Year last above-mentioned, and then and there sealed and delivered by the said *C.* in the Presence of two credible Witnesses (that is to say) *G. H.* and *J. K.* who have subscribed their Names thereto) assigned to the said *A.* the said Bond made and taken for the Appearance of the said *E.* as above, according to the Form of the Statute in such Case made and provided, which said Indorsement he the said *A.* brings here into Court, the Date whereof is the Day and Year above. By reason of which said Pre-

misses, and by Force of the said Statute in such Case made and provided, an Action accrued to the said *A.* as Assignee of the said *John Fuller* and *Sir Isaac Shard*, then Sheriffs of *London* aforesaid, to require and have of the said *E.* the said one hundred Pounds: Nevertheless the said *E.* although often required, hath not paid the said One hundred Pounds, either to the said *John Fuller* and *Sir Isaac Shard*, or either of them, or to the said *A.* but hitherto hath refused to pay the same, either to the said *John Fuller* and *Sir Isaac Shard*, or either of them, and still doth refuse to pay the same to the said *A.* as Assignee to the said *John Fuller* and *Sir Isaac Shard*, to the Damage of the said *A.* fifty Pounds. And therefore he brings his Suir, &c.

Trespass and false Imprisonment.

Northampton. *William Lee* complains of *William Scarmer* and *Francis Adams*, being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that on the 13th Day of *March*, in the 5th Year of the Reign of his present Majesty our Sovereign Lord *George* the Second, and so forth, they the said *W. S.* and *T.* with Force and Arms made an Assault on the said *William Lee*, at *Daventry* in the said County, and then and there beat, wounded, ill treated, took and imprisoned him, and without any reasonable or lawful Cause, and against the Laws and Customs of this Kingdom of *Great Britain*, detained him there so imprisoned for a long Time, (that is to say) for the Space of twenty-four Hours from

from thence next following, and until the said *William Lee* paid a Fine to the said *William Scarmer* and *Francis Adams*, of five Shillings and six Pence for his Discharge, and the said *William Scarmer* and *Francis Adams*, then and there committed other Injuries against him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *William Lee* 401. And therefore he brings his Suit, &c.

Warwick. *Thomas Peer* Esq; complains of *Trespass for Breaking the Plaintiff's Close, and Fishing in his Fishery.* *John Lucy* Esq; *Edward Loude*, and *John Watterman*, being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that on the 17th Day of *April*, in the 6th Year of the Reign of his present Majesty, they the said *J. E.* and *J. W.* with Force and Arms broke and entred into the Close of the said *Thomas Peer*, called *Cliffe-Bank*, at the Parish of *Alveston*, in the said County of *Warwick*; and in walking in the said Close, trod down and destroyed the Grass of the said *Thomas Peer*, then and there growing, to the Value of forty Shillings: And also for that afterwards, that is to say, the same Day and Year, at *D.* aforesaid, in the said County of *Warwick*, and divers Days and Times between the said 17th Day of *April* and the 1st Day of *June* then next following, with Force and Arms they fish'd in the separate Fishery of the said *Thomas Peer*, in the River *Avon*, in the Parish of *Alveston* aforesaid, in the said County of *Warwick*, and then, and at the said several Times, took and carried away Fishes from his said separate Fishery there
C 5 found,

found, that is to say, One thousand Roaches, and one thousand Gudgeons, to the Value of fifty Pounds, and then and there committed other Injuries against the said *Thomas Peer*, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *T. Peer* 200 l. And therefore he brings his Suit, and hath good Proof of the Premises, when the Court will consider thereof.

By *Bryan* a Distinction was made between a separate Fishery and a free Fishery; For no Man, says he, can have a separate Fishery but in his own Soil, and solely to himself; but a Man may grant a free Fishery in his own Pond to several Persons; which was agreed to by *Littleton*, Mich. 17 E. 4. 6. *Sir William Calthrop's Case*. See likewise the Case of *Upton and Dawkin* in the *Modern Reports*, *Hillary* the 2d of King *James* the Second, where a Judgment was reversed for *Libera Piscaria*, instead of *Separali Piscaria*, 3 Mod. 97.

It would be very proper, before I conclude my Declarations, to observe this Rule that was made as follows;

Trinity-Term, the fifth and sixth of King *George* the Second.

It is order'd, That upon all Proceſs to be sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in London or Middlesex, and the Defendant lives within twenty Miles of London, the Declaration shall be delivered with Notice to plead within four Days after the Delivery thereof; and the Defendant shall plead within the same four Days,

Days, without any Imparance. And in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Declaration shall be delivered with Notice to plead within eight Days after the Delivery thereof, and the Defendant shall plead within the said eight Days without any Imparance; and in Default of Pleading, as aforesaid, the Plaintiff may sign his Judgment, any Rule of this Court to the contrary notwithstanding.

General Bars.

And the said C. P. by G. W. his Attorney, &c. (as before in the General Issues) and saith, That the said A. ought not to have or maintain his said Action thereof against him, * Because he saith, that the said A. (such a Day and Year) exhibited his said Bill against him the said C. and that he the said C. did not at any Time within six Years before the Day of exhibiting the said Bill, undertake in such Manner and Form as the said A. hath above declared against him; and this he is ready to verify; wherefore he prays Judgment, whether the said A. ought to have or maintain his said Action thereof against him, and so forth.

Non Assumpit
intra sex
annos.

And the said A. saith, That (notwithstanding any thing by the said C. above alledged in his Plea) he ought not to be precluded from having his said Action thereof against him, because he saith, * That the said C. did within six Years before the Day of his, the said A.'s exhibiting his said Bill, undertake in such Manner and Form as the said A. hath above declared against him; and this he prays may be

Replica.
tion.

inquired of by the Country; and the said *C.* prays likewise the same; therefore let the Jury thereof come before our Sovereign Lord the King at *Westminster* on *Tuesday* next after fifteen Days of *St. Martin*, and who are no ways related either to the said *A.* the Plaintiff, or to the said *C.* to make a Jury between the Parties aforesaid, in the said Action, because as well the said *A.* as the said *C.* (between whom is the Matter in Variance) have submitted themselves to the Jury. The same Day is given to the said Parties there, &c.

*Issue on a
Compe-
ruit ad
Diem in
Trespas.*

* Because he saith, that he did appear before our said Sovereign Lord the King at *Westminster* aforesaid, on (such a Day) viz. *the Day mentioned in the Condition, which we'll suppose to be on Monday next after three Weeks of St. Michael*, to answer to the said *A.* above-named in the said Condition, in the said Action of Trespas, according to the Form and Effect of that Condition; which said Appearance was then and there recorded in his said Majesty's Court, before the King himself, as by the Record thereof, now remaining in the same Court of our said Sovereign Lord the King, before the King himself at *Westminster*, manifestly appears; and this he is ready to verify by the Record; wherefore he prays Judgment whether, &c.

*Replica-
tion.*

* That he ought not to be precluded from having his said Action thereof against him, because he saith, that there is no such Record of the said Appearance of the said *C.* before our said Sovereign Lord the King at *Westminster* on *Monday* next after three Weeks
of

of St. Michael, now remaining in the said Court of our said Sovereign Lord the King, before the King himself at *Westminster* aforesaid, as the said C. hath above alledged; and this he is ready to verify; wherefore he prays Judgment, and that his Damages occasioned by the said Trespass may be awarded to him, &c.

And the said C. by way of Rejoinder, pleads *Rejoinder.* that there is such a Record of the Appearance of him the said C. before our said Sovereign Lord the King, before the King himself at *Westminster*, on the said *Monday* next after three Weeks of Saint Michael, now remaining in the said Court of our said Sovereign Lord the King, before the King himself at *Westminster* aforesaid, as he hath above alledged; and this he is ready to verify by the Record itself; therefore the said C. is commanded, that he have here, on *Monday* next after eight Days of St. Martin, the Record itself, under the Peril attending the Neglect thereof.

Which Peril is that of having the Judgment of the Court, that he failed in his Record, and therefore is subject to Costs.

If the Defendant is to plead to a Bond *Comperuit ad Diem*, where the Condition is not set forth in the Declaration, then his Way of pleading it must be thus:

And the said C. by George Woodcraft his Attorney, comes and defends the Force, Injury and Damages, and whatever else he ought to defend, where and when the Court will *Comperuit ad Diem, with Oyer of the Condition.*

will take the same into Consideration, and craves Oyer of the said Obligation, and it is read to him; *If it is thought for the Defendant's Advantage to set forth the Obligation as well as the Condition*; and he likewise craves Oyer of the Condition of the said Obligation, which is read to him in these Words, that is to say, The Condition of this Obligation is such *(here recite the Condition)* which being read and heard, the said C. saith, that he the said A. ought not to have or support his said Action thereof against him, because he saith, that after the Making of the said Obligation, and before the Day of exhibiting the Bill of the said A. that is to say, on *Monday* next after three Weeks of *St. Michael*. So plead it as before.

*Proffer
wance of
the Condi-
tion plead-
ed to a
Bond for
the Pay-
ment of
Money.*

* Because he saith, that he the said C. at and upon the said 26th Day of *June*, mentioned in the said Condition, paid to the said A. the 30*l.* specified in the said Condition, according to the Form and Effect of the said Condition; and this he is ready to verify; wherefore he prays Judgment whether the said A. ought to have or maintain his said Action thereof against him the said C. &c.

*Replica-
tion.*

* Because he saith, that at and upon *(such a Day)* in the said Condition mentioned, he the said C. did not pay to the said A. the said 30*l.* specified in the said Condition, according to the Tenor of the said Condition, in Manner and Form as the said C. above alledges in his Plea; and this he prays may be inquired of by the

the Country; and the said C. prays likewise the same, &c.

Note; If you would plead Payment of the Money after the Day in the Condition, which the Defendant is at Liberty to do by the Stat. of the 4 and 5 of Queen Anne, cap. 16. by which it is enacted, "That where an Action of Debt shall be brought on any single Bill, or where an Action of Debt, or Scire facias, shall be brought upon any Judgment, if the Defendant hath paid the Money due upon such Bill or Judgment, such Payment shall and may be pleaded in Bar of such Action or Suit: And where an Action of Debt is brought upon any Bond which hath a Condition or Defeazance, to make void the same upon Payment of a lesser Sum, such Payment after the Day was made good: And that if at any Time, pending an Action upon any such Bond with a Penalty, the Defendant shall bring into Court, where the Action is depending, all principal Money and Interest due on such Bond, and also all such Costs as have been expended in any Suit or Suits in Law or Equity, upon such Bond, the said Money so brought in, shall be deem'd and taken to be in full Satisfaction and Discharge of the said Bond, and the Court shall and may give Judgment to discharge every such Defendant of and from the same accordingly;

You must plead it in this Manner:

Which being read and heard, the said *Anne* pleads, that the said *Lucy* ought not to have or support her said Action thereof against her

the

*Plea of
Payment
after the
Day in the
Condition,
pursuant to
the Act of
Parlia-
ment.*

the said *Anne*, because she saith, that after the making of the said Obligation, and after the said tenth Day of *June*, mentioned in the said Condition, and before the Day of the exhibiting of the Bill of the said *Lucy*, that is to say, on the sixteenth Day of *July* in the said Year, at *Therford* aforesaid, she the said *Anne* paid to the said *Lucy* the said twenty Pounds contained in the said Condition, according to the Form of the Statute in such Case made and provided, together with all Interest then due thereon; and this she is ready to verify; wherefore she prays Judgment whether the said *Lucy* ought to have or support her said Action thereof against her the said *Anne*, &c.

*Replica-
tion.*

And the said *Lucy* replies, that notwithstanding any Thing above alledged by the said *Anne* in her said Plea, she, the said *Lucy* ought not to be precluded from having her said Action thereof against the said *Anne*, because she the said *Lucy* saith, that the said *Anne* hath not paid to her the said *Lucy*, the said principal Sum of 20 *l.* and all Interest due thereon, in such Manner and Form as the said *Anne* hath above alledged in her Plea; and this she prays may be inquired of by the Country; and the said *Anne* prays likewise the same, &c.

*Infra Eta-
tem.*

* Because he saith, that at the Time of making the said several Promises and Undertakings, in the said Declaration above specified, he the said *J.* was within the Age of twenty-one Years (to wit) of the Age of nineteen, and no more; and this he is ready to verify; wherefore he prays Judgment, &c.

And

And the said *J. T.* saith, that notwithstanding any thing by the said *J. S.* above alledged in his Plea, he the said *J. T.* ought not to be precluded from having his Action against the said *J. S.* because he saith, that the said Sum of 30*l.* laid out and expended by the said *J. T.* for the said *J. S.* was for Taylor's Work done and performed for the said *J. S.* and for Materials and necessary Things used in and about such Work, and found and provided by the said *J. T.* for necessary Apparel and Clothing for the said *J. S.* suitable to his Degree (that is to say) at *London* aforesaid, in the Parish and Ward aforesaid; and this he is ready to verify; wherefore he prays Judgment, and that his Damages, occasioned by the Premisses, may be awarded to him, &c.

Replication that they were for Necessary, and fit for the Defendant's Degree.

Ed. Northey.

And the said *J. S.* saith, that the said 30*l.* mentioned by the said *J. T.* to have been laid out and expended by him for Taylor's Work done and performed for the said *James*, and for the Materials and necessary Things by him likewise mentioned to have been found and provided by the said *John*, for necessary Apparel and Clothing of the said *James*, were not for necessary Apparel and Clothing of the said *James*, in such Manner and Form as the said *John* hath above, in his Replication, alledged; and of this he puts himself upon the Country; and the said *John* does likewise the same, &c.

Rejoinder.

F. Pemberton.

And the said *W.* by *J. Allen* his Attorney, comes and defends the Force, Injury, and Damages

Son Assault Damages.

*Not guilty
to Parr.*

Damages, and whatever else he ought to defend, where and when the Court will consider thereof. And as to coming with Force and Arms, or whatever else is against the Peace of our Sovereign Lord the King; and as to the Beating and Maiming specified in the said Declaration, the said *W.* saith, he is not guilty thereof; and of this he puts himself upon the Country; and the said *Edward* does likewise the same. And as to the Residue of the said Trespasses above supposed to have been committed by him the said *W.* he the said *W.* saith, that the said *Edward* ought not to have or support his said Action thereof against him, because he saith, that at the same Time when the said Residue of the said Trespasses is supposed to have been committed, he the said *Edward*, at *London* aforesaid, in the said Parish and Ward, assaulted the said *W.* and would have then and there beat and wounded him, unless he, the said *W.* had then and there defended himself against the said *Edward*, as soon as he could; for which Reason the said *W.* did then and there defend himself against the said *Edward*; and therefore the said *W.* saith, that if any Damage or Misfortune then and there happened to the said *Edward*, it fell out and happened to the said *Edward* by his own assaulting the said *W.* as above, and was not done by the said *W.* but in his own Defence; and this he is ready to verify; wherefore he prays Judgment whether the said *Edward* ought to have or support his said Action thereof against him, &c.

And

And the said *Edward*, as to the said Residue ^{Replica-} of the Trespass aforesaid, replies, that he (not-^{tion.} withstanding any Thing alledged by the said *W.* above in his Plea) ought not to be precluded from having his said Action against the said *W.* because he saith, that he the said *W.* on the Day and Year, and at the Place in the Declaration above-mentioned, of his own Wrong, and without any such Reason as is above alledged, by the said *W.* in his Plea, committed an Assault upon the said *Edward*, and beat, wounded, and ill treated him in the Manner and Form as he the said *Edward* hath above complained against the said *W.* and *this he prays may be inquired of by the Country; and the said W. prays likewise the same; therefore let a Jury come before our Sovereign Lord the King at Westminster, on Thursday next after three Weeks from the Day of the Holy Trinity, as well to try this Issue, as the other Issue joined between the said Parties, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given the said Parties there, &c.*

* Because he saith, that he hath fully admin- ^{Plene Ad-}istrated all that were the Goods and Chattels of ^{ministra-} the said *Anthony*, at the Time of his Death ^{vit.} in his Hands to be administred, except Goods and Chattels to the Value of 17*l.* and that the said *Edward* hath nor, nor, at the Day of the exhibiting the Bill of the said *Richard*, had in his Hands unadministred any Goods and Chattels, which were the said *Anthony's* at the Time of his Death, except Goods and Chattels to the Value of the said 17*l.* and
this

this he is ready to verify; wherefore he prays Judgment whether the said *Richard* ought to have or maintain his said Action against him, except for the said 17*l.* &c.

*Replica-
tion.*

And the said *Richard*, as to the said 17*l.* which the said *Edward* acknowledges to be in his Hands unadministred, prays Judgment; and that the said 17*l.* together with his Damages occasioned by the Detaining of the said 17*l.* may be awarded to him, &c. therefore it is considered, and adjudged that the said *Richard* do recover against the said *Edward* the said 17*l.* of the Goods and Chattels that were of the said *Anthony*: And the said *Edward* in the Mercy, &c. and the said *Richard*, as to the Residue of his said Damages, saith, that he (notwithstanding any Thing above alledged by the said *Edward* in his Plea) ought not to be precluded from his said Action against him; because as to the said Plea, by the said *Edward* above pleaded, he the said *Richard* saith, that at the Day of exhibiting the Bill of the said *Richard*, that is to say, on the 7th Day of *May* in the 5th Year of the Reign of his present Majesty, the said *Edward* had unadministred in his Hands divers Goods and Chattels, which were the said *Anthony's* at the Time of his Death, to the Value of the Residue of his said Damages, over and above the said Goods and Chattels, to the Value of the said 17*l.* whereby he was able to have made Satisfaction to the said *Richard*, that is to say, at *Southwark*, in the County aforesaid; and this he prays may be inquired of by the Country; and the said *Edward* prays likewise the same. And because

*Replica-
tion as to
all besides
the said
17*l.* and
Judgment
for the Da-
mages con-
fessed.*

because it is convenient that in this Case there should be but one Taxation of Costs, * if Judgment should happen to be given for the said *Richard*, for the Residue of his said Debt and Damages; * *therefore* let the Taxation of Damages stay for not paying the said 17 l. (which the said *Edward* acknowledges to have in his Hands unadministred) till the said Issue above join'd to be try'd between the said Parties be determin'd. And as to trying that Issue, let there come a Jury thereof before our Sovereign Lord the King at *Westminster*, &c.

Unica
Taxatio.

And the said *A.* by *George Woodcraft* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will consider thereof; and saith, that the said *B.* ought not to have or support his said Action thereof against him, because he saith, that at the Time of the said Plaintiff's exhibiting his said Bill, he the said *A.* had fully administred all the Goods and Chattels which were of the said *D.* (meaning the Intestate) then in his Hands unadministred, and that he the said *A.* hath not, nor at the Day of the said *B.*'s exhibiting his said Bill, or at any Time since, had any Goods or Chattels which were the said *D.*'s at the Time of his Death, in the Hands of the said *A.* unadministred; whereby the said *A.* is not able to pay to the said *B.* his said Debt (or Damages, as the Case is); and this he is ready to verify; wherefore the said *A.* prays Judgment whether the said *B.* ought to have or support his said Action against him, &c.

Issue on a
Plene Ad-
ministra-
vit.

And

Replica-
tion.

And the said *B.* saith, that he (notwithstanding any Thing above alledged by the said *A.* in his Plea) ought not to be precluded from having his said Action against him, because he says, that he the said (Defendant) hath, and at the Time of exhibiting the said Bill, that is to say, on the 23d Day of *October*, in the 6th Year of the Reign of his said present Majesty, at *Thetford* in the County aforesaid, had divers Goods and Chattels which were of the said (Intestate, naming him) at the Time of his Death then in his Hands unadministred, to the Value of 20*l.* whereby he was able to have satisfied the (Plaintiff) for his said Debt and Damages; and this he prays may be inquired of by the Country; and the said (*A.* prays) likewise the same, &c.

A Plea of
Tender.

And the said *Edward*, by *A. B.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will consider thereof; and as to the second Promise and Undertaking mentioned in the said Declaration, and also as to 54*l.* 14*s.* 7*d.* Part of the 150*l.* mentioned in the first Undertaking, in the said Declaration, he saith, he did not undertake in such Manner and Form as the said *John* hath above declared against him; and of this he puts himself upon the Country. And as to 95*l.* 5*s.* 5*d.* Residue of the said 150*l.* the said *Edward* says, that the said *John* ought not to recover his Damages by Reason of not paying the said 95*l.* 5*s.* 5*d.* because he says, that from the Time of making the said Promise in the said Declaration first mentioned, he the said *Edward* was ready

to pay to the said *John* the said 95 l. 5 s. 5 d. and that after making the said Promise and Under-taking, and before the exhibiting the said Bill of the said *J.* that is to say, on the 22d Day of September, in the sixth Year of the Reign of his present Majesty, in the Parish of *St. Mary le Bow*, in the Ward of *Cheap*, he the said *Edward* tender'd Payment to the said *John* of the said 95 l. 5 s. 5 d. but the said *John* then and there refused to receive the same of the said *Edward*; and the said *Edward* is now ready to pay, and brings here into Court the said 95 l. 5 s. 5 d. if the said *John* is willing to receive the same; and this he is ready to verify; wherefore he prays Judgment whether the said *John* ought to have his said Damages against the said *Edward*, by reason of not paying the said 95 l. 5 s. 5 d. &c.

Edward Northey.

And the said *John*, as to the said Plea of the said *Edward*, concerning the said first Proposition in the said Declaration mentioned, as to the said 95 l. 5 s. 5 d. above pleaded, saith, that he, notwithstanding any thing by the said *Edward* above alledged in his Plea, ought not to be precluded from his said Action hereof against the said *Edward*, because he says, that the said *Edward* did not tender Payment to the said *John* of the said 95 l. 5 s. 5 d. in such Manner and Form as the said *Edward* above in his Plea alledged; and this he prays may be enquired of by the Country; and the said *Edward* prays likewise the same, &c.

Of making up Issues.

If the Issue is joined the same Term the Declaration is of, then you enter it thus:

London.

Memorandum.

London. Be it remembered, that on *Monday* next after three Weeks of *St. Michael*, this same Term, came before our Sovereign Lord the King at *Westminster* (*the Plaintiff*) by *A. B.* his Attorney, and then brought there, into the Court of our said Sovereign Lord the King at *Westminster*, his Bill against (*the Defendant*) being in the Custody of the Marshal, &c. in an Action of Debt or Trespass upon the Case (*or as the Nature of the Action is.*) And there are Pledges for the Prosecution, (that is to say) *John Doe, Richard Roe*, which said Bill follows in these Words, (that is to say)

Declaration.

Somerset. *A. B.* complains of *C. D.* in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, being before the King himself, of a Plea (*or in an Action*) that he render to him ten Pounds, which he owes to, and unjustly detains from him, for that whereàs (*so on to the End of the Declaration.*)

Plea.

And when the Issue is of the same Term with the Declaration, then the Entry hath no Imparlance, but after the Declaration enter the Plea with a new Line thus :

And the said (Defendant) by *George Woodcraft* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court will consider thereof, (or take the same into Consideration) and saith, that he did not undertake, &c.

If the Declaration be above four Terms standing, then you must say, *Be it remembered*, that heretofore (that is to say) of the Term of *St. Hillary* in the third Year of the Reign of our Sovereign Lord the King, came, &c.

The Form of making up an Issue of another Term.

Of the Term of St. Hillary, in the sixth Year Placita.
of the Reign of our Sovereign Lord George
the Second, King of Great Britain, &c.

Somerset. ff. Be it remembred, that heretofore (that is to say) in the Term of Saint Michael last past, *A. B.* came before our Sovereign Lord the King at Westminster, by *George Woodcraft* his Attorney, and brought here into his Majesty's Court, his Bill against *C. D.* (if there be an al' dict', then put it so) otherwise called *C. D.* &c. being in the Custody of the Marshal, &c. of a Plea (or in an Action) of Debt or Trespass and Assault, or of Covenants broken (as the Cause is): And there are Pledges for the Prosecution (to wit) *John Doe* and *Richard Roe*, which said Bill follows in these Words: *Somerset. ff.* *A. B.* complains of *C. D.* being in the Custody of the Marshal of the Marshalsea of our Sovereign Lord the King, before the King himself, of a Plea, That he render to him, &c. (so go on with the Declaration). If in Case, you say, For that whereas, &c.

Memorandum.

And now at this Day (that is to say) on Tuesday next after the Octaves of St. Hillary (the first Day of the Term the Issue is entered of) this same Term, (to which Day the said *C.* had Leave to imparl, and then to Answer) come as well

D

the

and the
Plea of
Hillary
Term, and
you don't
deliver the
Issue before
Trinity
Term, then
you make
it an Issue
of Trinity
Term, and
say, And
now here
at this
Day (that
is to say)
on Monday
next after
the Mor-
row of the
Holy Tri-
nity, &c.

the said *A.* by his Attorney, as the said *C.* by *J. W.* his Attorney; and the said *C.* defends the Force, Injury, and Damages, and what ever else he ought to defend, when and where the Court will please to consider thereof :

* And saith, That he doth not owe the said *A.* the said ten Pounds, or any Part thereof, in Manner and Form as the said *A.* above complains against him: And of this he puts himself upon his Country; and the said *A.* does likewise the same; therefore let there come a Jury thereof before our Sovereign Lord the King at Westminster, on Monday next after the Octaves of the Purification of the Blessed Virgin Mary, and who are in no wise related either to the said *A.* the Plaintiff, or to the said *C.* to recognize and make a Jury of the Country between the said Parties; because as well the said *A.* as the said *C.* (between whom is the Matter in Variance) have thereof submitted themselves to the Jury. The same Day is given to the said Parties here, &c.

It is said by a very judicious Man and an Officer of the Court of King's Bench, that this is a proper Form of an Entry of an Imparlance to an Interlocutory Judgment, as follows:

And the said Thomas in his proper Person (or by Attorney, as the Case is) comes and defends the Force and Injury, &c. and the said Matthew prays that the said
Thomas

Thomas may answer to his said Declaration; whereupon the said *Thomas* hath, *Tuesday* next after fifteen Days from the Day of *Saint Martin*, given to him by the Court of our Sovereign Lord the King here, to answer, &c. The same Day is given to the said *Matthew* there, &c. At which Day, before our said Sovereign Lord the King at *Westminster*, comes the said *Matthew* by his said Attorney, and the said *Thomas*, at the same Day solemnly called to answer, doth not come.

General Issues.

And the said *B.* by *George Woodcraft* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof.

* And saith, That he is no wise guilty of the Premises above charged on him, as the said *A.* above complains against him. And of this he puts himself upon his Country; and the said *C.* does likewise the same.

* And saith, That he did not undertake in such Manner and Form as the said *A.* above complains against him. Non Accusatur.

* And saith, That he ought not to be charged with the said Debt by Virtue of the said Bond, because he saith, the said Bond is not his Deed. And of this, &c. Non est Factum.

I hope I shall not be condemn'd for Prolixity, if I here make a Digression from the Translation of the Proceedings, to explain what is Meant by the Words in the Award of a *Venire*, at the Close of an Issue, viz. *Duodecim, &c. Per Quos, &c. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Idem Dies datus est partibus prædictis ibidem, &c.*

First, As to *Duodecim, &c.*

It must be understood, that all the Contractions above are the Emphatical Parts of the Sentences in the Writ of *Venire*, which is the next Judicial Process after the Issue join'd.

This Issue, when join'd, is the same with that which the Civilians understand by *Causæ status Compositio*. And by this Issue some Fact or other is affirmed and denied, that the Proof of the one Side or the other, to the Subject Matter contain'd in such Issue, will determine the Contest between the Parties. The Persons to determine the Truth to be of one Side or the other, are the Jury, which are to be twelve free and lawful Men; and before the Act of Parliament of the 4th and 5th of Queen Anne, Chap. 16. they were to be *de Vinceto*

cineto (quia Vicinus) facta Vicini presumitur scire.

But by that Statute, which was made for preventing Delays, which happen'd by Reason of Challenges to the Array of Panels of Jurors, and to the Polls, for Default of Hundredors: " Every *Venire facias* for " Trial of an Issue in any Action or Suit " in any Court of Record at *Westminster*, " shall be awarded out of the Body of the " proper County where such Issue is tria- " ble; but this was not to extend to " Appeals of Felony or Murder, or to " any Indictment, Presentments, &c. of " Treason or Felony, or to any Writ, " Bill, Action, or Information upon any " Penal Statute.

By the Words *Venire facias*, it is to be understood that they are not compulsive, (that is to say) the Sheriff is not, by the *Posse Comitatus* raised on them, to cause or compel them to come; but by Summons and by *Bonos Summonitores*, Good Summoners, such as may give a credible Testimony to the King's Judges, who are to try the Cause, of the Reason of the not coming of those that make Default; which Summoners are to notify and shew the Panel to such Persons appointed to be Jurymen the Day of the Return. 42 E. 3. cap. 11. 6 H. 6. cap. 2. and if any

Juror be returned who is not summoned, by the 35 of *H. 8. cap. 6.* 27 *Eliz. cap. 6.* the Sheriff is finable; in Case the Jurors summon'd have no just Excuse, which the Judges will allow, by the 5 of *Eliz. cap. 26.* they lose Issues for Non-appearance; but the Act of God, or other just Reason, shall excuse them.

As to their being Free;

That is, they were not to be Villeins, which, before that Service was antiquated, made such Persons subject to the Directions of their Lords; therefore they are to be disengaged, that they may use the Freedom of their Reason and Integrity.

As to their being Lawful;

They are to be such as are under the Notice and Protection of our Laws, and therefore are not to be Aliens, Persons Outlaw'd or Excommunicated, or convicted and attainted of Treason, Felony, Perjury, and such like.

I shall not here enumerate the several Causes of Challenges to Jurors, it being not strictly applicable to my present Purpose, which is intended in this particular Digression only to explain what I have above-mention'd.

Besides, an excellent Illustration of that Matter may be seen in *Coke's 1 Inst. 158. Bracton 185. Fleta, Book 4. Chap. 8.*

But

But before I conclude my Observation on the Words *Liberos & Legales homines*, I beg leave to shew, that they are not only to be Persons free from Servitude, and disengaged from their Lords, but ought to be disengag'd from all Passions, and the immediate Corruption of their own Minds, with respect to Hatred and Envy. For that Purpose, see the excellent Wisdom of the Common Law; a Law, (*O! qui mutata qua forma jam spectatur!*) that provided against our very Inclinations to Wrong.

See the Words of *Fleta*, in Book 4. Chap. 8. (*inter alia*) "*Item repellitur*" (speaking of a Jurymen) "*propter Inimicitiam magnam dum presentem, secus vero propter levem, quæ si aliquando fuit, modo tamen non est.*" And *Bracton* goes yet farther than *Fleta* on this Occasion, to explain this Matter, for he proceeds thus: "*Item Notandum quod Cause suspicionum quandoque presentes sunt, quandoque præteritæ, & ea quæ fuit & non est, locum non habet: Quia præsens Causa debet allegari & probari, præterita autem, quia quæ fuit, non est, & ideo locum non habet, nec probari debet.*" "*Item causa non sufficit quæ dudum fuerat, nisi præsens fuerit vel recens,*"

D 4

"scilicet

But

“*scilicet ante hesternum diem vel nudius-*
 “*tertius Furator & aliquæ partium ini-*
 “*mici erant, & licet modo non sunt, ta-*
 “*men illa Causa recusationis probabilis est*
 “*propter recentiam.*”

Which I paraphrastically translate thus:

A *Juryman* is to be disabled to try the Cause between such Parties, with either of which he is in great *Enmity*; but otherwise, if it is but a mere Dislike, Disrespect, or a slight Occasion, and it is to be observed that Causes and Occasions for suspecting the Hearts and Integrity of such *Jurymen*, against whom such Challenges are made, are sometimes past, and sometimes present; and therefore the Occasion that is past is not, and hath no Existence, and ought not to be proved; and tho' the Occasion is not sufficient to ground the Suspicion of a Man's Integrity, unless it be present or recent; yet if such Occasion had been two or three Days before that Time, that is an Occasion of *Enmity*, within the Meaning of *Bracton*; and tho', properly speaking, the Occasion is not, but is past, yet that shall be a Foundation for a probable Cause of a Refusal of such *Juryman*, by Reason of its Recency; so that such a tender Regard had the Common Law for Impartiality and equal

equal Distribution of Justice, that such an ill Quality as Enmity is a Disability; nay, both *Bracton* and *Fleta* go yet further, "*Item repellitur, si fuerit cum eo pro quo jurare debet Commensalis, vel de ejus familia.*" So that if a Juryman boarded in the House of either Party, it was a Disability: And that they might not be allured by Rewards, or pliable through Necessity, the *Venire* goes on; Every of which (that is, every Juryman) is to have ten Pounds a Year at least in Lands, Tenements, or Rents, whereby the Truth of the Matter will be the better known.

By 27 *Eliz. cap. 6. sect. 1.* reciting that the *Jurors* were, before that Statute, to have 40 s. a Year Freehold, that Sum was encreased to four Pounds.

And the Value of Money decreasing, as Money itself, in Process of Time, increased, that Sum of four Pounds a Year was by the 4th and 5th of *William and Mary* increased in *England* to ten Pounds a Year, as it now stands; and in *Wales* to six Pounds a Year.

Secondly, As to the Words *Per quos, &c.*

Very little need be said on this Occasion, because the Words themselves understood by the *&c.* are sufficiently declarative of their

their own Propriety, and only shew the Reason of the Law in appointing that they should have *ten Pounds per Annum*, (*viz.*) by which the *Truth* of the Matter may be the better discovered.

Thirdly, As to the Words, *And who neither*, &c.

These Words arise likewise from the Words of the *Venue*, *Et qui nec prædicto, A.* (the Plaintiff) *nec prædicto C.* (the Defendant) *aliqua affinitate attingunt*; which I translate thus: And who are in no wise related either to the said *A.* (the Plaintiff) or to the said *C.* (the Defendant.)

For I think it is very plain, that this *Relation* is not confined to a Relation by *Consanguinity*, but it is a Disability in a Juryman, if he is any ways related by *Marriage*; and this Matter is well illustrated in *Coke's first Institute* 157. a. where it is said, that the Law presumes a Man will shew more Favour to a *Kinsman* than to a *Stranger*; and how far soever remote it is that he is related, it is a Disability to his being a *Juryman*; and if the Plaintiff challenges a *Juror* for *Kindred* to the Defendant, it is no *Counter-Plea* to say, that he is of *Kindred* also to the Plaintiff, though he be in a nearer Degree; for the
Words

Words of a *Venire* forbid the *Juror* to be of Kin to either Party: And I have read in a Book of good Authority, that the *Provida Mens* (of the Law) had this under its Consideration, when it appointed they should be no ways related to the Parties, and that *Affinity* contracted by *Marriage* should be a Disability in a *Juryman*, because Women having a prevalent Influence over their Husbands, who are naturally inclined to a kind Indulgence to the Fair Sex; and therefore that a *Juryman's* Love and Affection for his Wife and her Counsels, might not preponderate his Love to *Justice*, and so cause him to forget to do equal Right to the Parties, or at least, that he might not be prevailed on too easily to join in doing Wrong; the Law wisely provided, that such Relation by *Marriage* should likewise be a Disability in a *Juryman* to try that Cause between the Parties, to either of which he is so related, as well as if it had been a Relation by *Consanguinity*.

Fourthly, As to the Words, *Ad recognoscendum*, &c.

Which is here rendered into *English*, to make a *Jury* between the said Parties (that is) to *recognize* of the Matter in

Variance; and I beg leave to be a little more particular on this Subject, because, when I have answered a Question ask'd me concerning the usual Manner of awarding a *Venire*, by saying, *It has been*, to name the most *emphatical Words* of the *Writ*, and then say, &c. to avoid a useless Repetition; It has been objected to me, that there are no such Words in the usual *Writ* of *Venire*, as *recognoscendum* or *recognitionem faciendum* in the *Writ* itself; and that therefore (*say they*) to use Words in the Award of a *Writ*, that are not Part of the *Writ* itself, is absurd: And the Objection is good, if there was or had not used to have been such Words in the *Writ*; but I apprehend there is no Absurdity in the awarding a *Venire* in that Manner, though no such Words as *recognoscendum* or *recognitionem faciendum* are now in the *Writ* itself.

And, I hope, I shall clear up that Imputation of an Absurdity in the following Manner:

The *Issue* (as said before) being joined, upon a Matter affirmed by one Party, and denied by the other, the *Writ* awarded is for the *Jury* to *recognize* or *recognitionem facere*, (which Words *recognitionem facere*, as my Lord Coke truly says, are

are somewhat more than *cognitionem facere*, and is deliberately and maturely to consider and take Cognizance) whether the Plaintiff or Defendant says true; (as for Example) in the *Old Registrum Brevium* (the Fountain of Original and Judicial Process) you have this to Demonstration: Where the Issue was upon a *Plene Administravit*, the *Venire* runs thus: *Præcipimus tibi quod Venire facias coram Justiciariis nostris apud Westm' duodecim liberos & legales homines de Vicineto*: "By which the Truth of the Matter will be the better known, and who have no Relation either to Plaintiff or Defendant, to recognize upon their Oaths, whether or no the said J. hath administered the several Goods and Chattels which were of, and belong'd to the Intestate at the Time of his Death, as Executor of the last Will and Testament of the said W. after his Decease:" Then follow the Words, *Quia tam, &c.* So there is likewise a *Venire* in the *Old Registrum Brevium*, fol. 7. b. Tit. *Judicial Writs*, upon an Issue joined on *Non est factum*, which runs thus: "*Ad recognoscendum super sacramentum suum si prædictum scriptum sit factum prædicti J. Dages, sicut prædictus Thomas filius R. dicit, vel non. Quia tam, &c.*" So in *Rassall*, Title *Action*
upon

upon the Case, fol. 11. d. in an Action for not repairing a Gutter, the *Venire* runs thus: "*Ad recognoscendum super sacramentum suum si prædictus W. H. quandam gutteram inter domum suam & domum præfati W. H. apud E. reparare & sustentare debeat, &c.*" But when a *Venire* was made out on the Award of a *Sex tales*, or a *Decem tales*, that is, to grant to the Plaintiff a Writ to make up his Jury of Twelve, by Ten or Six others of the Persons there standing about the Court, because Men enough did not appear on the *Venire*; the Form of the Writ then was: "*Præcipimus tibi quod Distringas (those that had appeared) Juratores Summonitos in Curia nostra coram Justiciariis nostris apud Westmonasterium, inter J. & B. petentes, & G. de K. tenentem de placito Terræ, per omnes Terras, &c. Ita quod, &c. Et quod, &c. Coram Justiciariis nostris apud Westmonasterium,*" (and so on to the mandatory Part of the Writ as to the rest; and then the Writ went on in this Form.) "*Præcipimus tibi, quod sex tales, tam milites quam alios liberos & legales homines de vicinetu prædicto in juratam illam ponas, & illos habeas coram Justiciariis nostris apud Westmonasterium apud præfatum Terminum, vel coram prædicto*"

“ *prædicto* Gulielmo, &c. (that is the
“ Judge) *prædictis* die & loco, ad faci-
“ *endum* juratam illam.” Reg. Brev. 2d
Part 22.

And I can meet but with one *Venire* in
all *Rastall's Entries*, where the Words *ad*
recognoscendum are not therein; which
is in *Title Trespafs*, fol. 670. a. Column
rst; and that is, a *Venire* after a *Rejoinder*
in *Aid*, which runs thus: “ *Rex. Vic.*
“ *S. Salutem*; *præcipimus* tibi, quod *Venire*
“ *facias* coram nobis in *crastino Ascensionis*
“ *Domini*, ubicunque tunc fuerimus in *An-*
“ *glia*, viginti & quatuor tam milites quam
“ *alios liberos & legales homines* de *vici-*
“ *netu* de *B.* in *Comitatu* tuo, per quos rei
“ *veritas melius sciri poterit*, & qui nec
“ *F. P. Querenti*, nec *J. A. de A.* in *comi-*
“ *tatu* tuo, *W. P. ac aliis*, &c. ac *E. N.*
“ *militi T. N. & R. T. Armigeris*, de qui-
“ *bus prædicti H. A. & W. H. separatim*
“ *petierunt auxilium*, quod eis concessum fuit,
“ *aliqua affinitate attingunt*, ad faciendum
“ *quandam juratam patriæ inter partes*
“ *prædictas de placito transgressionis*, quia
“ *tam, &c.*” (as in our modern Writs of
Venire).

And Note; The antient Form of making
out all *Venire's* was to contain the Sub-
stance of the Issue; and it was *recognos-*
cendum si, &c. whether what the Plaintiff
or Defendant had said was true.

And

And how the Writs of *Venire* came to be shorten'd, does not appear in the Books; but certain it is, that the Writ is much shorter to say, That the *Jurors* shall come to make a *Jury* between the said Parties, than to say, That the *Jurors* shall come to recognize, as in *Rastall* 11. a. *Whether W. T. ought, and the Tenants of that House Time out of Mind have used, to repair the Gutter between his House and the House of W. H.* and yet it is necessary that the Courts should keep to their Forms, for tho' several Acts of Parliament have cured the Faults of Practisers in Writs of *Venire*, *Habeas Corpora* and *Distingas*, and in several other Instances; yet the Courts have always preserved their Entries pure and unaltered; and the respective Entries, that are now used, were handed down to us almost a thousand Years unfullied and revered by all Ages; and, be it said to the Honour and Justice of the Proceedings at Common Law, that a *Judgment* of the Courts of Law, concerning an Estate of ten thousand Pounds, costs but 2 s. for the Entry, when a *Decretal Order*, which is *quasi* a *Judgment*, will sometimes cost 5 l. when the Matter in Dispute is but 20 l.

Fifthly,

Fifthly, By the Words, *Quia tam, &c.*

What is understood by this *&c.* is no more than to declare, that this Writ issues to summon a sufficient Number to make a Jury between the said Parties, *Because as well the Defendant as the Plaintiff, or as well the Plaintiff as the Defendant* (for he is generally named first who first tenders an Issue) *have submitted the Matter to be determined by such Jury.*

Sixthly, By the Words, *Idem dies datus est partibus prædictis ibidem, &c.* is meant the same Day, that is the Day of the Return of the *Venue*, and is given them by the Court, to be at *Westminster* (or if it be by Original, to be *where-ever His Majesty will then be in England*) to proceed further toward the Trial: And whenever the Entry is by *Idem dies datus est*, it is then a Day given to the Parties by the Court.

Demurrers.

The same Course is to be observed in *Demurrers* as in *Issues*, with regard to an *Imparance*; (that is to say) if the Demurrer be of the same Term with the Declaration, then there is no *Imparance*; but the Entry begins as a Plea, thus:

A Dr-

The Attorney's

A Demurrer in Abatement to a Declaration.

And the said *C. D.* by *George Woodcraft* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, (or will take the same into Consideration) and the said *C.* prays Judgment of the said **Declaration*, because, he saith, that the said **Declaration*, and the Subject Matter therein contained, are insufficient in Law for him the said *A.* to maintain his said *Action* against the said *C.* to which said **Declaration* the said *C.* is under no Necessity, or in any wise bound by the Law of the Land, to answer; and this he is ready to verify: Whereupon for want of a sufficient **Declaration* in this Case, the said *C.* prays Judgment of the said **Declaration*, and that the same may be quashed, &c.

If it be in Abatement of the Bill, then instead of the Words, prays Judgment of the said Declaration, you say, prays Judgment of the said Bill, and put the Word Bill in the room of the Word Declaration, in every place where the Asterisks are.

A Joinder in Demurrer.

And the said *A.* saith, that notwithstanding any thing above alledged by the said *C.* the said *Declaration* ought not to be quashed, because he saith, that the said *Declaration*, and the Subject Matter therein contained, are good and sufficient in Law, for him the said *A.* to maintain his said *Action* against the said *C.* which said Subject Matter contained in the said *Declaration*, the said *A.* is ready to verify and prove in such Manner as the Court shall think

fit;

fit; and because the said C. hath made no Answer thereto, nor hitherto in any Manner denied the same, the said A. prays Judgment, and that his Damages occasion'd by the Premisses may be awarded to him, &c.

A Demurrer in Bar to a Declaration.

And the said John saith, that the said Thomas ought not to maintain his said Action thereon against him, because he saith, that the said Declaration, and the subject Matter therein contained; (as in the former Demurrer, to the Words) wherefore he prays Judgment, and that the said Thomas may be precluded from having his said Action thereon against him, &c.

A Joinder in Demurrer in Bar.

And the said Thomas saith, that (notwithstanding any thing above pleaded by the said John) he the said Thomas ought not to be precluded from maintaining his said Action thereon against the said John, because he saith, that the said Declaration, and the subject Matter therein contained; (as in the former, to the Words) wherefore he prays Judgment, and that his Damages, occasion'd by the Premisses, may be awarded to him, &c.

A Demurrer to a Plea in Bar.

And the said A. saith, that (notwithstanding any Thing above alledg'd by the said C. in his Plea) he the said A. ought not to be precluded from having his said Action thereon against him, because he saith, that the said Plea, in such Manner and Form as the same is pleaded

pleaded by the said C. and the subject Matter therein contained, are insufficient in Law to preclude him the said A. from having his said *Action* against the said C. to which said *Plea*, the said A. is under no Necessity, nor in any wise bound by the Law of the Land to answer; and this he is ready to verify; wherefore, by the Defect of a sufficient *Plea* in this *Particular* (or in this Case) he the said A. prays *Judgment*, and that his *Damages* occasioned by the Premises may be awarded to him, &c.

A Joinder in Demurrer to a Plea in Bar.

And the said C. saith, that the said *Plea*, in such Manner and Form as the same is above pleaded by the said C. and the subject Matter therein contained, are good and sufficient in Law to preclude him the said A. from maintaining his said *Action* thereon against the said C. which said *Plea*, and the subject Matter therein contained, he the said C. is ready to verify and prove in such Manner as the Court shall direct; and because the said A. hath not answered the said *Plea*, or in any Manner denied the same, the said C. as before, prays *Judgment*, and that the said A. may be stop'd from going on with his said *Action* thereon against him, &c.

A Demurrer to the Plaintiff's Replication.

And the said C. saith, that the said *Plea*, in such Manner and Form as the said A. hath pleaded the same by way of *Reply*, and the subject

subject Matter therein contained, are in Law insufficient for him the said *A.* to maintain his said *Action* against the said *C.* to which said *Replication* the said *C.* is not under a Necessity, or in any wise by the Law of the Land bound to answer; and this he is ready to verify; wherefore, by reason of the Defect of a sufficient *Replication* in this Particular (*or in this Cause*) the said *C.* as before, prays *Judgment*, and that the said *A.* may be stopped from going on with his said *Action* thereon against him, &c.

A Demurrer to a Rejoinder.

And the said *A.* saith, that the said *Plea* of the said *C.* in such Manner and Form as the said *C.* hath pleaded the same by way of *Rejoinder*, and the Subject Matter therein contained, are in Law insufficient to stop the said *A.* from going on with (*or maintaining*) his said *Action* against the said *C.* which said *Plea*, and the Subject Matter therein contained, the said *A.* is under no Necessity, nor in any wise bound by the Law of the Land, to answer; and this he is ready to verify; wherefore, for want of a sufficient *Rejoinder* in this Particular (*or in this Cause*) the said *A.* as before, prays *Judgment*, and that his *Damages* occasioned by the Premises may be awarded to him, &c.

A Joinder in Demurrer to a Rejoinder.

And the said *C.* saith, that the said *Plea* of him the said *A.* in such Manner and Form as he

The Attorney's

he hath pleaded the same by way of *Rejoinder*, is in Law good and sufficient to stop the said *A.* from going on with (or maintaining) his said *Action* against him the said *C.* which said *Plea*, and the Subject Matter therein contained, he the said *C.* is ready to verify and prove in such Manner as the Court shall direct. And because the said *A.* hath not answered the said *Plea*, nor in any Manner denied the same, he the said *C.* as before, prays *Judgment*, and that the said *A.* may be precluded from maintaining his said *Action* against him, &c.

When you enter a *Demurrer* upon the Roll, or deliver the *Demurrer Book* to the Attorney of the other Side, you must go on after the *Joinder in Demurrer*, in this Manner:

But because the Court of our said Sovereign Lord the King (or this his said Majesty's Court) now here, are not yet advised what *Judgment* to give of and concerning the Premises, a Day therefore is given to the said Parties to be before our said Sovereign Lord the King at *Westminster*, until *Monday next after three Weeks from the Day of St. Michael*, for hearing their *Judgment* of and concerning the Premises, because that the said Court of our said Sovereign Lord the King, now here, are not yet advised, &c.

A Demurrer to a Declaration in a Prohibition.

And the said *William*, by *Thomas Coward* his Attorney, comes and defends the Force, Injury, and Damages, and the Contempt of our Sovereign Lord the King, above laid to his Charge, and whatever else he ought to defend, when and where this Court will consider thereof; and saith, That he is not prosecuting a Suit in the said Court Christian, contrary to a Royal *Prohibition* to him thereon directed, as the said *Henry Croucher*, (*who sues in this Cause as well for our Sovereign Lord the King, as for himself*) doth suppose by his said *Declaration*; and of this he puts himself upon the Country. And the said *Henry Croucher* thereof does likewise the same. But the said *William Collins*, in order to have a *Consultation* in this Cause, saith, That the said *Declaration*, in such Manner and Form as the same is above made and declared, and the Subject Matter therein contained, are in Law insufficient for him the said *William Collins* to be precluded from having his said *Tithes* demanded of the said *Henry* in the said Court Christian; and that he is under no Necessity, or bound by the Law of the Land in any Manner, to answer to the said *Declaration*, in such Manner and Form as the same is made and declared; and this he is ready to verify; whereupon, for want of a sufficient *Declaration* of the said *Henry Croucher* (*who sues in this Cause as well for our Sovereign Lord the King as for himself*) the said *William Collins* prays Judgment, and that

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The Attorney's

that his Majesty's Writ of *Consultation* may be granted to him, &c.

A Joinder in Demurrer.

And the said *Henry Croucher* (as to the said *Plea* of the said *William Collins* above pleaded to have his said Majesty's Writ of *Consultation*) inasmuch as he the said *Henry Croucher* hath above alledged sufficient Matter in Law to preclude the said *William Collins* from having his said *Tithes* in the said Court Christian, of him the said *Henry Croucher*, which he is ready to verify; which said Subject Matter the said *William* having not denied, or in any wise answered thereto, but hath hitherto altogether refused to admit the same to be verified; he prays *Judgment*, and that the said *William* may not have his Majesty's Writ of *Consultation*, &c. And because the Court of our said Sovereign Lord the King, now here, are willing to be well advised of and concerning the Premises, &c.

A Demurrer to a Plea in Abatement in a Quare Impedit.

And their said Majesties *Attorney General* (who prosecutes this Suit for their Majesties' saith, that the said *Plea*, pleaded as above by the said *Henry Bishop of London*, and *William Lancaster*, in order to quash the said Writ, and the Subject Matter therein contained, are in Law insufficient to quash the said Writ; and that he the said *Attorney General* (who prosecutes this Suit for their said Majesties) is under

no Necessity, or in any wise bound, to make Answer to the said *Plea*, in such Manner and Form as the same is pleaded; and this the said *Attorney General* (who prosecutes this Suit for their said Majesties) is ready to verify; whereupon, by the Defect of a sufficient Answer of the said Bishop and *William* in this Cause, the said *Attorney General* (who prosecutes this Suit for their said Majesties) prays Judgment that the said *Writ* may be adjudged to be good, and prays a *Writ* to the said Bishop, &c.

Edward Ward.
Thomas Trover.

A Joinder in Demurrer.

And the said *Henry* Bishop of *London* and *William Lancaster* say, that the said *Plea* of them the said *Henry* Bishop of *London* and *William Lancaster* above pleaded, in order to quash the said *Writ*, and the Subject Matter therein contained, are in Law good and sufficient to quash the said *Writ*; whereupon, inasmuch as their said Majesties *Attorney General* hath not answered the said *Plea*, or in any Manner denied the same, they the said *Henry* Bishop of *London* and *William Lancaster* (as before) pray Judgment of the said *Writ* and *Declaration*, and that the said *Writ* may be quashed, &c.

A Demurrer to a Bar to a Cognizance for Damage-feeant.

And the said *William Clarke* and *Robert Varnham* say, that the said *Plea* of the said *John*, above pleaded in *Bar* to the said *Cognizance* is

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in Law insufficient to preclude them the said *William* and *Robert* from justly acknowledging the taking of the said Sheep, as Bailiffs to the said *Daniel* Earl of *Nottingham*, in the Place where the same are supposed to have been taken, and that they are under no Necessity, or in any wise bound by the Law of the Land, to answer to the said *Plea*, in such Manner and Form as the same is pleaded; and this they are ready to verify; whereupon, for want of a sufficient *Plea* of the said *John* in this Cause, they the said *William* and *Robert* pray Judgment, and a Return of the said Sheep, together with their *Damages* occasioned by the Premisses to be awarded to them, &c.

Plaintiff joins in Demurrer.

And the said *John*, inasmuch as he hath above alledged sufficient Subject Matter in Law for him the said *John* to maintain his Action against the said *William* and *Robert* (which said Subject Matter they the said *William* and *Robert* have not denied, or in any manner answered the same, but altogether refuse to admit the verifying thereof) prays Judgment, and that his *Damages* occasioned by the taking and unjustly detaining of the said Sheep may be awarded to him, &c.

A Demurrer to a Scire Facias.

2 Saund-
ers 341.

And the said *Henry* saith, that the said Writ of *Scire Facias*, in such Manner and Form as the same is prosecuted and sued out of this Court,

Court, and the Subject Matter therein contained, are in Law insufficient for them the said *Matthew, Richard, Hercules, and Peter* to be intitled to their Execution thereupon against the said *Henry*, for the said one hundred and sixty Pounds, and that he is under no Necessity, or by the Law of the Land bound to answer thereto in the Manner and Form as the same is made; and for Causes of *Demurrer* in Law, according to the Form of the Statute in such Case made and provided, the said *Henry* shews to the Court these following Reasons: (that is to say) *Inasmuch* as it doth not appear by the said *Writ of Fieri Facias*, that the said *Henry Mildmay* had at any Time in his Hands, or in the Hands of his Officers, the said One hundred and sixty Pounds, or any Part thereof, by Virtue of his Majesty's *Writ of Fieri Facias*, above specified in the said *Writ of Scire Facias*; and for that no Execution ought to issue against the said *Henry Mildmay* upon the Return of the *Writ of Scire Facias* above mentioned; whereupon he prays *Judgment* of the said *Writ of Scire Facias*, and that the said *Matthew, Richard, Hercules and Peter*, may be precluded from having their said Execution against him, &c.

A Joinder in Demurrer.

And the said *Matthew, Richard, Hercules, and Peter*, inasmuch as they have above alleged sufficient Matter in Law to have their said Execution against the said *Henry*, for the said 160 l. in Form aforesaid, which they are ready to verify; which said Subject Matter, the

said Henry hath not denied, or in any Manner answered thereto; but hath hitherto altogether refused to admit the same to be verified; they pray Judgment as before, and that their said Execution for the said 160*l.* against the said Henry, may be awarded to them, &c.

*The Scire Facias to which the Demurrer was as above, was a Scire Facias against the Sheriff of Southampton, setting forth that a Writ of Fieri Facias had been sued out by the Plaintiffs against one Sydenham, to levy a Debt of 200*l.* with Costs, directed to the Defendants; and that the Sheriff made a Return to the same, that he had made a Warrant to his Bailiffs, who had taken the Goods of Sydenham by Virtue thereof, to the Value of 160*l.* and that they were rescued out of their Custody, and that Sydenham had no other Goods; and the Plaintiffs suggested likewise, that the said Sum had not been paid to them; upon which they pray to have Execution, and the Plaintiff had Judgment in the Common Pleas, and the same was affirmed in the King's Bench, and the Authorities to warrant this Judgment are as follow.* 2 Danvers 495. pl. 17. 2 Keb. 789, 821. 1 Mod. 246. 6 Mod. 291. 2 Saund. 47. 1 Roll. Abr. 498. pl. 17, 302. pl. 14. 2 Roll. Rep. 57. Hard. 13. Cro. Jac. 514. Godb. 276. Hob. 206, 219. Show. 103. Yelv. 44.

I leave it to the Profession, whether there would not be more Propriety in the Words and Supported, than in the Words and Maintained, in the several Demurrers and Joinders before inserted, (I dare say) it will have the same Weight with it.

Of Trials.

Before you insert the *Memorandum*, of which sufficient has been said before, you begin your Record of *Nisi Prius* with a *Placita*, thus:

Pleas before our Sovereign Lord the King *Placita* at *Westminster*, of the Term of *St. Hillary*, in the sixth Year of the Reign of our Sovereign Lord George the Second, King of *Great Britain, France and Ireland*, Defender of the Faith, &c.

Then your Issue comes next, after which you insert another *Placita*, the same with the former, unless the Trial of the Cause is postponed to another Term than that which your *Placita* is of; for in such Case your *Placita* must be of the same Term that the Cause is to be tried in.

A Jurata for a Cause to be tried in London within the Term.

See the Forms of the *Jurata*, as the same

London. The Jury between *A. B.*, by his Attorney, Plaintiff, and *C. D.* of a Plea of *Trespas* (or *Trespas* on the Case, as the Action is) are respited before our Sovereign Lord the King at *Westminster*, until *Friday* next after the *Octaves of St. Martin*, unless

are usually passed and examin'd by the proper Officer of the Court, in the Appendix hereafter.

His Majesty's faithful and well-beloved *Robert Lord Raymond*, his said Majesty's *Chief Justice*, assigned to hold Pleas in His said Majesty's Court, before the said King himself, should come before at *Guildhall, London*, on *Thursday* next after the *Octaves* of *St. Martin* (if at the Sittings after Term, then you say) at *Guildhall, London*, on *Thursday* the thirtieth Day of *November*, according to the Form of the Statute in such Case made and provided; therefore let the Sheriffs have their Bodies, &c. The same Day is given to the said Parties there. For the Remainder of the Entry, see the Asterisk below.

If your Proceedings are by *Original*, then the Return of the *Distringas* must be awarded of a general Return (that is to say) on the *Octaves* of *St. Martin*.

If your Jurata be for a Trial at the *Affizes*, then you must say:

Unless before that Time, His present Majesty's Justices, appointed to hold the *Affizes* in the said County, should (on the Day that the *Affizes* are held) at the *Castle of Norwich*, according to the Form of the Statute in such Case made and provided, come before, through the Default of the Jurors; therefore let the Sheriff have their Bodies, &c. The same Day is given to the said Parties there, &c. * And be it known, that His Majesty's Writ for that Purpose, on *Tuesday* next after the *Octaves* of the Purification of the blessed Virgin

Virgin Mary, this same Term before our Sovereign Lord the King at *Westminster*, is to if in London be delivered of Record to the *Deputy Sheriff* (or Under Sheriff) of the County aforesaid, to be executed in due Form of Law, under a Peril attending the Neglect thereof.

The Form of a Jurata in Middlesex.

If your Action be in *Middlesex*, then say:

Unless His said Majesty's faithful and well-beloved Robert Lord Raymond, His said Majesty's Chief Justice, assigned to hold Pleas in the Court of our said Sovereign Lord the King, before the King himself at Westminster, in the said County of Middlesex, in the great Hall of Pleas, according to the Form of the Statute, &c.

For other Jurata's, see at the End of the Proceedings in the Appendix.

A Venire Facias.

George the Second, &c. to the Sheriffs of London, Greeting. We command you, that you cause to come before us at *Westminster*, on *Thursday* next after three Weeks from the Day of the Holy *Trinity*, twelve free and lawful Men of the Body of your County (every one of which to have ten Pounds a Year, at least, of Lands, Tenements, or Rents) by whom the Truth of the Matter will be the better known; and who are in no wise related either to *A. B.* the Plaintiff, or to *C. D.* the Defendant, to make a certain Jury between the Parties aforesaid, in an Action of *Trespas*

The Attorney's

(or as the Action is) *because as well the same C. D. (the Defendant) as the aforesaid A. B. (the Plaintiff) between whom the Contention is, have thereof submitted themselves to the Jury; and have you there the Names of the Jury, and this Writ. Witness Robert Lord Raymond at Westminster, the twelfth Day of February in the fifth Year of our Reign.*

Ventris.

A Distringas.

George the second, &c. to the Sheriff of Somerset, Greeting. We command you, that you distrain the several Persons mentioned in the Panel hereto annexed, Jurors summon'd in our Court before us, between *A. B. Plaintiff, and C. D.* by all their Lands and Chattels in your Bailiwick; so that neither they, or any of them, or any one for them, meddle therewith, until you have another Precept from us, and that you answer for the Issues of the same to us, so that you have their Bodies before us at *Westminster*, on *Monday* next after three Weeks from the Day of *St. Michael*, or before our beloved and faithful *Robert Lord Raymond*, our *Chief Justice* assigned to hold Pleas in our Court before us (if he should come before that Time, that is to say, on *Wednesday* the third Day of *July* at *Guildhall, London*, by Force of the Statute in such Case made and provided) to make a Jury of the County, between the said Parties in an Action of *Trespas* (or *Tressass upon the Case*, as the Case is) and hear their Judgment for their many Defaults; and have you there

where the Names of that Jury and this Writ.
Witness *Robert Lord Raymond, &c.*

Subpoena for the *Sittings in London or Middlesex.*

George the Second, &c. to *John Doe* and *Richard Roe, John Denn* and *Richard Fenn,*
Greeting. We command you, and every of you, firmly injoining you, that (laying aside all and all Manner of Busineses and Excuses whatsoever) you and every of you be before our faithful and well beloved *Robert Lord Raymond,* our Chief Justice appointed to hold Pleas in our Court before us, on *Thursday* the Thirtieth Day of *November* next following, at *Guildhall, London,* to testify all and singular those things which you, or either of you, shall know, in a certain Action pending undetermined between *A. B.* Plaintiff, and *C. D.* Defendant, in an Action of *Trespass* upon the Case (or *Trespass,* or of *Debt,* as the Case is) and to be tried at that Day by a Jury of the Country. And this do you and every of you, in no wise omit, under the Penalty of one hundred Pounds, of you and every of you, Witness *Robert Lord Raymond* at *Westminster,* the twenty-eighth Day of *June,* in the sixth Year of our Reign.

A Subpoena for Witnesses at the Assizes.

George the Second, &c. To *A. C. D. E. F. G.* and *J. K.* *Greeting.* We command you, and every of you, firmly injoining you (that laying aside all and all manner of Busineses and

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Excuses

Excuses whatsoever) you and every of you be in your proper Persons before our Justices at the Assizes appointed to be held in the County of *Somerset*, on *Wednesday* the twenty-sixth Day of *July* next following, at in the County aforesaid, to testify all and singular those Things, which ye or either of you shall know in a certain Action now depending and undetermined in our Court before us, between *A. B.* Plaintiff, and *C. D.* in an Action of *Trespas*, (or as the Action is) and on that Day to be tried by a Jury of the County; and this ye and every of you are in no wise to omit, under the Penalty of one hundred Pounds for every of you. Witness *Robert Lord Raymond*, &c.

A Ticket to be delivered to the Witnesses, shewing them the Writ of Subpoena under the Seal of the Court.

Mr. A. B.

By Virtue of a Writ of *Subpoena* to you directed, and herewith shewn unto you, you are personally to be and appear before His Majesty's Justices of Assize on _____ next being the _____ Day of _____ at _____ of the Clock in the _____ noon of the same Day, at the Court then to be holden at _____, to testify the Truth, according to your Knowledge, in a certain Cause now depending, and then there to be tried between *A. B.* Plaintiff, and *C. D.* Defendant, in an Action of _____ on the Part of _____ and hereof you are not to fail on Pain of One hundred Pounds. Dated the _____ Day of _____ in

If it be for the Sittings then you alter it, and make it agreeable with the Venire.

in the sixth Year of the
Reign of our Sovereign Lord George the Se-
cond, by the Grace of God, of Great Britain,
France and Ireland King, Defender of the
Faith, &c. and in the Year of our Lord
1732.

*The Postea where the Defendant appears
and makes Default.*

Afterwards (that is to say) on the Day and
at the Place within mentioned, before the
within written *Robert Lord Raymond*, (there
being associated unto him *Capel Billinsley, Esq;*
according to the Form of the Statute in that
Case made and provided) come as well the
within written *A. B.* as the within written
C. D. by their Attornies within contained,
(if the Defendant makes Default, then it is thus)
came the within named *A. B.* by his Attor-
ney within contained, and the within named
C. D. altho' solemnly required, comes not, but
hath made Default; therefore let the Jury,
whereof Mention is made, be accepted of
against him thro' Default; and the Jurors
of that Jury being summon'd, some of them
(that is to say) *E. G. H. J.* (reciting the Names
of so many of the Jury of the principal Panel,
which is annexed to your Distringas, as you shall
find there to have been sworn) come and are
sworn upon that Jury, (and because the Resi-
due of the Jurors of the same Jury do not ap-
pear, therefore other Persons of those standing
by the Court, by the Sheriffs of the County
aforesaid, at the Request of the said *A.* and
by

*As now
there will
be no tales
de circum-
stantibus;
for since the
late Act of
Parliament
there will
scarce be
any want
of Jurors,
therefore
the Form of
a Postea,
according to
the late Act
of Parlia-
ment, may
be seen at
the End of
the Pro-
ceedings in
the King's
Bench, in
the Appen-
dix.*

by the Command of the said Chief Justice (*if in London or Middlesex; if at the Assizes then*) by the Command of the said Justices, are now newly set down, whose Names are affixed in the within written Panel, according to the Form of the Statute in that Case made and provided; which said Jurors, so newly set down, (that is to say) *T. K. (and so naming the rest of the Talesmen)* being required, came, who together with the said other Jurors, before impanelled and sworn to declare the Truth of the within Contents, being elected, tried, and sworn, upon their Oaths declare, that the said *C. did not undertake (or is not guilty of the Premises within charged on him) or did not pay to the said A. the within mentioned 100 l. upon the within mentioned 10th Day of October; or that the within written Bond for the within mentioned 100 l. in the Declaration within written, is not the Deed of the said C. (or as the Issue is) in such Manner and Form as the said A. has within complain'd against him; and they assess the Damages of the said A. B. by reason of not performing the Promises and Undertakings within written, besides his *Expences and Costs* laid out by him about his prosecuting this Cause, to 100 l. and for his *Expences and Costs* to 53 s. 4 d. Therefore it is adjudged, that the said A. do recover against the said C. the said *Damages*, by the said Jury assessed in Form aforesaid, and also 11 l. 6 s. 8 d. for his *Expences and Costs*, by his said Majesty's Court now here, and with the Consent of the said C. awarded to him by way of Increase, which said*

said Damages in the whole, amount to 114 l. and be the said C. amerced, &c.

* Note; The Meaning of the Juries being accepted of through the Default of the Defendant, may be seen among the Proceedings in the Common Pleas.

The Award of a Venire as to trying one of the Issues, and as to the Demurrer, the Entry of the Continuances, and as to the Plea of another of the Defendant's Continuances by Dies dat. and then a Return of the Writs of Venire and Distringas, with divers other Continuances.

Therefore as to trying the said Issue joined between the said J. I. now Plaintiff, and the said J. M. H. W. and T. R. in Form aforesaid, the Sheriff is commanded that he cause to come before our Sovereign Lord the King, *In three Weeks from the Feast Day of Easter next to come (wherever his said Majesty shall then be in England) twelve free and lawful Men of the Body of his County, (or of his Bailiwick) every one of which to have ten Pounds a Year at least in Lands, Tenements or Rents, whereby the Truth of the Matter will be the better known; and who are no ways related either to the said J. I. the now Plaintiff, or to the said J. M. H. W. and T. R. to recognize upon their Oaths the full Truth of and concerning the Premises, and make a Jury between the said Parties. The same Day is given to the said Parties there, &c. And as to the Matter in Law, whereof*

This is the Return when the Proceedings are by Original, for if they are by Bill, then the Return must be at a certain Day, viz. on Friday next after three Weeks from the Feast of Easter.

as well the said *J. I.* the now Plaintiff, as the said *R. D.* and *A. O.* have submitted themselves to the Judgment of the Court here; a Day is given to the said Parties, as well to the said *J. I.* the now Plaintiff, as to the said *R. D.* and *A. O.* before our said Sovereign Lord the King now here, in three Weeks from the said Day of Easter next to come, *wheresoever*, &c. for taking their Inquest thereof, because the Court here are not thereof as yet, &c. And as to the Plea of the said *R. J.* above pleaded, the said *J. I.* the now Plaintiff prays Leave to imparl thereto until the same Time, before our said Sovereign Lord the King, *wheresoever*, &c. and he hath such Day, &c. The same Day is given to the said *R. J.* &c. at which Day the said Parties personally came before our said Sovereign Lord the King at *Westminster*: And as to trying the said Issue joined between the said *J. I.* now Plaintiff, and the said *J. M. H. W.* and *T. R.* in the Manner as above, the Sheriff returneth his said Writ in all things served and executed, together with a Panel of the Names of the Jury annexed to the said Writ; none of which, &c. Therefore the Sheriff is commanded that he have their Bodies before our Sovereign Lord the King *on the Morrow of the Holy Trinity, wheresoever*, &c. and that he distrain them by all, &c. and that of the Issues, &c. so that he may have their Bodies before our said Sovereign Lord the King *on the Morrow of the Holy Trinity, wheresoever*, &c. to recognize in (the Manner) aforesaid. The same Day is given to the said Parties there, &c. And as to the Matter in Law, whereof

as well the said *J. I.* the now Plaintiff, as the said *R. D.* and *A. O.* have submitted themselves to the Judgment of the Court, because the Court of our said Sovereign Lord the King now here, are not advised of giving their Judgment of and upon the Premises submitted to the Judgment of the Court; therefore a further Day is given as well to the said *J. I.* the now Plaintiff, as to the said *R.* and *A. O.* before our said Sovereign Lord the King, till on the *Morrow of the Holy Trinity, whereforever, &c.* for hearing their Judgment of and upon the Premises, because that the Court of our said Sovereign Lord the King here are not yet therein, &c. And as to the said Plea of the said *Richard Jackson* above pleaded, the said *J. I.* the now Plaintiff, prays further Leave to imparl before our said Sovereign Lord the King, until the Time aforesaid, *whereforever, &c.*

The Entry of a View before Trial.

The Names of the Jury are newly set down in the Panel within written, and are filled up according to the Form of the Statute in that Case made and provided; and the Jurymen so newly set down before *J. R. &c.* being summoned, likewise came, who, together with the said other Jurymen before to this Purpose impanelled, were elected, impanelled, and sworn; and because the Sheriff had not Jurymen to see the Place in Question, according to the Direction of the Writ within specified, and because it seems it is convenient to the said Parties, that a View of
the

As the Form of a View will by the late Act of Parliament for Regulation of Juries be altered, I have inserted one in the Appendix to the Proceedings in the King's Bench, which I apprehend to be pursuant to the Intention of that Act of Parliament.

the Place in Question by more Jurymen, should be further had before the Trial of the said Issue; therefore *A. S.* the last Jurymen aforesaid, by the Command of the said Justice, and by the Consent of the said Parties, is withdrawn from the said Panel, and the rest of the said Jurors are now discharged from giving any Verdict upon the within Contents; therefore the said Jury are respited here until *Wednesday next after three Weeks from the Day of the Holy Trinity*, thro' the Default of Jurymen, because none came; therefore the Sheriff is (as before) commanded that he have their Bodies, and appoint ten such, &c. On which Day came as well the said *Robert* as the said *Mary* and *William*, by their said Attornies, and the Sheriff (that is to say) *R. N. Esq;* hath made a Return hither, that as to Distraining *A. Q.* another Jurymen named in the Writ of our said Sovereign Lord the King to him directed, that Writ was so lately delivered to him, that he could not execute the same, by reason of the Shortness of the Time. But as to Appointing of ten such, whereof Mention is made in the same Writ, the Sheriff now makes a Return here, that Execution thereof appears in a certain Schedule thereof annexed to the said Writ, in which Schedule is contained the Panel of the Names of the ten Jurymen, of which none, &c. therefore the said Jury are further respited here, until *Tuesday next after three Weeks from the Day of St. Michael*, unless the Justices of our said Sovereign Lord the King, at the Assizes appointed to be held in the said County by Force of the Statute, &c.

should

ould come before, on *Monday* the sixth Day of *August*, at the Castle of *Exeter* in the said County, thro' the Default of the Jurors, &c. and that the Sheriff should distrain the said Jurymen by all their Lands, Chattels, &c. and that of the Issues, &c. and that they be here, unless, &c. to make up the said Jury, &c. And now here at this Day came the said *Robert*, by his Attorney, and the said Justices, &c. sent hither their Record in these Words, afterwards (here recite the *Posse* till you come to these Words) came and are sworn upon the Jury; and because the Residue of the Jurymen of the same Jury did not appear, therefore others of the Persons standing by the Court, by the Sheriff of the County aforesaid, for that Purpose elected at the Request of the said *R. B.* and by the Command of the said Justices, are newly set down, whose Names are affixed in the within written Panel, according to the Form of the Statute in that Case made and provided; and the Jurymen so newly appointed (that is to say) *A. B. C. D.* &c. being required, likewise came, who being elected, impanelled, and sworn, together with the other Jurymen aforesaid, before to this Purpose impanelled, to declare the Truth of the within Contents, &c. say upon their Oaths, &c. (according to the Substance of the Verdict.)

A Verdict in Trespass and Ejectment upon Not guilty.

Say upon their Oaths, that the said *A.* is guilty of the Trespass and Ejectment within written,

written, in such Manner and Form as the said C. doth within complain against him; and they assess the Damages of the said C. by Reason thereof, besides his Expences and Costs laid out by him about his Suit in this Cause, to twelve Pence, and for his Expences and Costs, to forty-three Shillings and four Pence; therefore, &c.

A Postea upon an Issue on Solvit ad Diem.

Say upon their Oaths, that the within written J. S. in his Life-time, after the within mentioned tenth Day of *December*, mentioned in the within written Condition, and before the Day of the exhibiting the within written Bill, did not pay to the within named P. S. the within mentioned Sum of One hundred Pounds, and all Interest due for the same, as the said L. hath within for that Purpose alleged in his Plea; and they assess the Damages of the said G. by Reason thereof, besides his Expences and Costs laid out by him about his Suit, in this Cause (or this Behalf) to twelve Pence, and for his Expences and Costs, twenty Shillings; therefore, &c.

A Verdict for the Plaintiff upon an Issue on Plene administravit.

Say upon their Oaths, that the said A. hath, and at the Day of exhibiting the within written Bill of the said C. (that is to say) on the twentieth Day of *March*, 1732. had divers Goods and Chattels in her Hands unadministred,

administred, which were of the within named *B.* at the Time of his Death, to the Value of the Debt within specified, whereof he might have made Satisfaction to the said *C.* for his said Debt (that is to say) at *Thetford* in the County aforesaid; and they assess the Damages of the said *A.* by Reason thereof, besides his Expences and Costs laid out by him about his Suit in this Cause, to two Pence, and for his Expences and Costs, to forty Shillings; therefore, &c.

A Verdict for the Defendant upon Plene administravit.

Say upon their Oaths, that the within specified *John*, at the Time of exhibiting the Bill of the said *James* within contained, hath fully administred all the Goods and Chattels in his Hands unadministred, which were of the said *Isaac* at the Time of his Death; and that he the said *John* hath not, nor at the Day of exhibiting the within specified Bill, or at any Time afterwards, had any Goods or Chattels in his Hands unadministred, which were of the said *Isaac* at the Time of his Death, wherewith he could pay the within specified Debt, or any Part thereof, to the said *James*, as he the said *John*, in his within written Bar (or Plea) hath alledged by Way of Defence; therefore, &c.

For

*For the Plaintiff upon an Issue on Non est
Factum.*

Say upon their Oaths, that the within mentioned Writing Obligatory is the Deed of the within named *John*, as the within written *James* hath declared against the said *John*, and they assess the Damages of the within named *James*, by Reason of detaining his said Debr, besides his Expences and Costs by him expended about his Suit in this Cause, to twelve Pence, and for his Expences and Costs, to twenty Shillings; therefore, &c.

The Entry where a Juror is withdrawn.

Being elected, tried, and sworn, to declare the Truths of the within Contents, whereupon, for certain Reasons exciting as well the said Justices, as the said Parties, the said *N. M.* one of the within mentioned Jury, is withdrawn from the Panel, and the rest of the Jury are altogether discharged from giving any Verdict of and concerning the within mentioned Premisses, &c.

In Replevin on an Issue on Non cepit and Tender.

Being elected, tried, and sworn, to declare the Truth, as to the taking and unjustly detaining of one black Gelding, Parcel of the within written three Geldings, within supposed to have been taken and unjustly detained by him the said *John*, in the first Issue within mentioned,

Non est, joined between the said Parties, say upon their Oaths, that the said *John* did neither take or detain the said black Gelding, as the said *J.* hath within alledged in pleading thereto; and as to the within mentioned grey Gelding, specified in the second Issue joined between the said Parties, they further say upon their Oaths, that the said *James* did not, under Payment, to pay to the said *John* of the within mentioned six Pounds and thirteen shillings, mentioned in the within written Plea, as the said *James* hath alledged by way of Rejoinder thereto; therefore, &c.

A Verdict in Replevin for the Defendant.

Say upon their Oaths, that the said *John*, on the within mentioned twentieth Day of February, in the within written fourth Year of the Reign of our said Sovereign Lord the King, within specified in the Declaration of the said *Joseph* and *William*, did not of his own proper Injury, or without any such Cause alledged by the said *Henry*, in his within written Avowry, in the within mentioned Place, in which, &c. take the Goods and Chattels within contained of the said *Joseph* and *William* within specified, and detain them until, &c. as the said *John* hath within alledged in his Defence; therefore, &c.

A Non prof. at the Assizes, in Trespass against an Officer.

Being elected, tried, and sworn, it was given in Evidence to the said Jury, on the Part of

of *J. M. W. G.* and *T. H.* that the said *J. M.* was an Headborough, and that that which he did was in Execution of his Office as Headborough, and that that which *W. G.* and *T. H.* did, was in Aid and Assistance of the said *J. M.* and by his Command; upon which the said Jury went from the Bar to consult in giving their Verdict therein; and thereupon it was consulted and agreed amongst themselves to give in their Verdict, and for that Purpose they came back here again to the Bar; whereupon the said *T. C.* although solemnly required, did not come, nor further prosecute his within written Bill against the said *J. M. W. G.* and *T. H.* therefore, &c.

A Verdict in Assault and false Imprisonment, Part for the Plaintiff, and Part for the Defendant.

Being elected, impanelled, and sworn to declare the Truth of the within Contents, as to the Issue joined between the said *John* and the said *James*, declare upon their Oaths, that the said *James* is not guilty of the Premises within charged upon him, as the said *James* hath within alledged in making his Defence thereto: And as to the first Issue joined between the said *John* and the said *Francis* (that is to say) as to the coming with Force and Arms, and whatsoever else that is against the Peace of our Sovereign Lord the King that now is, and also as to the whole Treipass within mentioned, except the Assaulting,

Beating,

Beating, Ill-treating, Taking, and Imprisonment, and in Prison detaining and keeping of the said *John*, by the Space of eight Hours within mentioned, Part of the within mentioned twenty-four Hours, the said Jury upon their Oaths further declare, that the said *Francis* is guilty thereof in such Manner and Form as the said *John* within complains against him; and as to the second Issue within mentioned, joined between the said *John* and the said *Francis* (that is to say) as to the Assaulting, Beating, Ill-treating, Taking, and Imprisoning, and in Prison detaining and keeping of the said *John* by the said Space of eight Hours, the said Jury upon their Oaths further declare, that the said *Francis*, the Day and Year specified in the Declaration within written, of his own proper Injury, without any such Cause as by him the said *Francis* is within pretended in his Plea, in the Parish of *St. Sepulchres*, in the within specified County, made an Assault upon the said *John*, and beat, ill-treated, took, imprisoned, and in Prison there detained and kept the said *John*, in such Manner and Form as the said *John* doth within complain against him; and they assess the Damages of the said *John* by reason thereof, besides his Expences and Costs expended by him about his Suit in this Cause, to forty Shillings, and for his Expences and Costs, to twenty Shillings; therefore, &c.

Another

*Another in Case for continuing the Stopping
up of the Plaintiff's Lights.*

Elected, impanelled, and sworn to declare the Truth of the within Contents within mentioned, as to the continuing the Building in the within written Declaration, in the Issue joined between the within mentioned Parties, to be built and erected by the said *Joseph*, declare upon their Oaths, that the said *Joseph* is Guilty in such Manner and Form as the said *Simon* within complains against him: And by reason of continuing the said Building last mentioned, by the said *Joseph* within mentioned to be built and erected, they assess the Damages of the said *Simon*, besides his Expences and Costs expended by him in his Suit in this Cause, to One hundred Pounds, and for his Expences and Costs to twenty Shillings: And as to the continuing the Building or Edifice within specified in the said Declaration, first within mentioned to be built and erected by the said *Joseph*, if it should happen Judgment upon the within written Demurrer in Law thereon, whereof the said Parties have submitted themselves to the Judgment of Court, should be given for the said *Simon* against the said *Joseph*, then the said Jury do assess the Damages of the said *Simon* against *Joseph*, by Reason of the Continuation of the said Edifice first above-mentioned to be erected and built by the said *Joseph*, besides his Damages and Costs aforesaid, above put in Issue by him for the Continuance of the said first mentioned Edifice, erected and built as aforesaid, to one Penny; therefore, &c.

Of Judgments by Default.

If instead of a Trial there is Judgment by Default, the Manner of entering the Judgment is thus; over your Entry you say thus:

ALSO of this present Trinity Term. Witness Robert Lord Raymond.

Then you enter the Warrants of Attorney thus:

Somerset. A. B. appoints in his Stead J. W. his Attorney, against C. D. (if there is an aldict' then say) otherwise called, &c. in an Action of Debt.

For the Defendant.

Somerset. C. D. appoints in his Stead G. H. his Attorney, against the said A. in the said Action.

Then after your Declaration is entered with a proper Memorandum, either of the same Term, or of another, then thus:

Imparllance.

And now here at this Day, (that is to say) on Wednesday next after three Weeks from the
F Day

Nil dicit
in Debt.

Day of *St. Michael* this same Term, (until which Day the said *C. D.* had Leave to imparl, and then to answer) came before our Sovereign Lord the King at *Westminster*, *A. B.* by his said Attorney and the said *C. D.* although solemnly required, came not, nor doth he say any Thing in Bar or Denial of the said Action of the said *A.* whereby the said *A.* remains undefended by the said *C.* Therefore it is adjudged, that the said *A.* do recover against the said *C.* his said Debt, and also thirty-three Shillings and four pence, as well for his Damages occasioned by the detaining of his said Debt, as for his Expences and Costs laid out by him about his Suit in this Cause, awarded by this Court to the said *A.* with his Consent; and be the said *C.* amerced, &c.

If it be of the same Term, then say,

Nil dicit
in Case.

* The last
Day of the
Term.

And the said *C.* by *J. C.* his Attorney, comes and defends the Force and Injury, when, &c. and the said *A.* prays that the said *C.* may answer to the said Declaration of him the said *A.* whereupon the said *C.* hath till * *Monday* next, after fifteen Days from the Day of *St. Martin*, given to him, by his said Majesty's Court here, to answer to the said Bill of the said *A.* and the said *C.* although solemnly required to answer thereto, came not, nor doth the said *C.* say any Thing in Bar or Denial of the said Action of the said *A.* whereby the said *A.* remains therein unde-

* For the understanding the Meaning of the Defendant's being amerced, &c. see among the Proceedings in the Common Pleas.

undefended by the said C. for which Cause the said A. ought to recover against the said C. his Damages sustained by him by Reason of the Premises; but because his said Majesty's Court now here, know not what Damages the said A. hath sustained in this Suit by Reason of the Premises, therefore the Sheriff is commanded that he diligently inquire, by the Oath of twelve honest and lawful Men of his Bailiwick, what Damages the said A. hath sustained, as well by Reason of the Premises, as for his Expences and Costs laid out by him about his Suit in this Cause; and that he send the said Inquisition which he shall take thereon, to our Sovereign Lord the King at *Westminster*, on *Wednesday* next after three Weeks of *St. Michael*, under his (or their) Seal (*according as there are one or two Sheriffs*) and the Seals of those by whose Oaths he shall take such Inquisition, together with his Majesty's Writ to him (or them) therefore directed. The same Day is given to the said A. there, &c.

Non sum informatus in Case.

And the said C. by J. C. his Attorney, comes and defends the Force and Injury, when &c. and the said A. prays that the said C. may answer to his the said A.'s Declaration; whereupon the said Attorney says, that he is not instructed by the said C. his Client, to give any Answer for him to the said A. in the Premises; nor doth he say any Thing in Bar or Denial of the said A.'s Action; whereby the said A. remains therein undefended by the said C. for which Cause the said A. ought to recover, &c.

If it be in an *Assumpsit*, then thus:

Ought to recover his Damages against the said C. by Reason of his not performing his said Promises and Undertakings: But because his said Majesty's Court, now here before the King himself, know not what Damages, &c.

If in *Trespas*s, then, by Reason of the *Trespas*s aforesaid, or *Trespas*s and *Affault*, as the Case is.

If it be in *Debt*, then thus:

When you come to the Words, *remains therein undefended*, you say instead of the Words, *for which Cause the said A. ought to recover*, &c. You say, therefore it is adjudged, the Plaintiff do recover, &c.

Non sum Informatus to the first Promise, and Issue on the second, with a Unica Taxatio.

And the said C. by Fotherley Baker his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof (or take the same into Consideration) and as to the first Promise and Undertaking mentioned in the said Declaration, the said Attorney saith, that he is not instructed by his Client, the Defendant, to give any Answer

swer for the said *C.* to the Complaint of the said *A.* and says nothing more thereto; whereby the said *A.* remains undefended by the said *C.* for which Cause the said *A.* ought to recover against the said *C.* his said Damages occasioned by the Non-performance of the said first Promise, mentioned in the said Declaration; and as to the said second Promise, mentioned in the said Declaration, the said *C.* saith, that he did not undertake (*or made no such Promise*) in such Manner and Form as the said *A.* hath above complained against him; and of this he puts himself upon the Country; and the said *A.* doth likewise the same: And because it is convenient and necessary, that there should be only one Taxation of the Damages occasioned by Reason of the Premises; therefore let the Writ of Inquiry of Damages cease till the Issue above joined between the said Parties be determined; therefore, as well to try the said Issue joined between the said Parties, as to inquire what Damages the said *C.* hath sustained in that Behalf, the Sheriff is commanded, &c.

Unica
Taxatio.

Judgment by Cognovit Actionem.

And the said *A.* by *C. B.* his Attorney, comes and defends the Force, Injury, and Damages, and whatsoever else he ought to defend, when and where the Court will please to take the same into Consideration; and saith, that he can't deny the Action of the said *A.* nor but that he owes to the said *A.* the said ten Pounds and ten Shillings; (*and if on a Bond say*) can't deny but that the said

Bond is his Deed, nor but that he owes to the said *A.* the said 10 l. 10 s. in such Manner and Form as the said *A.* above complains against him: Therefore it is adjudged, that the said *A.* do recover against the said *C.* his said Debt, and also (the Money taxed for Costs) for his Damages which he hath sustained as well by Occasion of the Detaining his said Debt, as for his Expences and Costs awarded by this Court to the said *A.* with his Consent; and be the said *C.* amerced, &c.

The same by Administrators.

Say that they can't deny but that the said Bond is the Deed of the said *G.* nor but that they detain from the said *H.* the said hundred Pounds in such Manner and Form as the said *H.* complains against them; therefore it is adjudged (*as above*) and also for his Damages which he sustained, as well occasioned by the Detaining of his said Debt, as for his Expences and Costs laid out by him in prosecuting this Suit, awarded by this Court to the said *H.* with his Consent, to be levied of the Goods and Chattels in their Hands unadministred, which were the said *G.*'s at the Time of his Death, if they have so much in their Hands unadministred; and if they have not, then the said Damages to be levied of the proper Goods and Chattels of the said *A.* and *B.* and be the said *A.* and *B.* amerced, &c.

Judge

Judgment to take Assets in futuro.

And the said *W.* and *W.* inasmuch as the said *Elizabeth*, by her Plea, doth not deny but that the said Writing Obligatory is the Deed of the said *John Barnard*, nor but that the said Debt, contained in the same Writing, is a true and just Debt yet unpaid, and by the said subject Matter above pleaded by the said *Elizabeth*, saith nothing in Bar or Denial of the Action of the said *W.* and *W.* but that she hath no Goods or Chattels in her Hands unadministred, which were of the said *John* at the Time of his Death; and for that the said *W.* and *W.* are not yet advised but that the Plea of the said *Elizabeth* may be true, they pray Judgment for their said Debt by them above demanded, to be levied of the Goods and Chattels which were of the said *John* at the Time of his Death, that shall hereafter come to the Hands of the said *Elizabeth* to be administred: Therefore it is adjudg'd, that the said *W.* and *W.* do recover against the said *Elizabeth*, their said Debt, to be levied of the Goods and Chattels which were of the said *John* at the Time of his Death, that shall hereafter come to the said Hands of the said *Elizabeth* to be administred; and be the said *Elizabeth* amerced, &c.

A Cognovit Actionem, where the Plaintiff acknowledges Damages to 50 l. so that the Execution be stayed until the 15th of April then next following.

And the said C. in his proper Person, comes and defends the Force and Injury when, &c. and saith, that he can't deny the said Action of the said A. not but that the said C. undertook (or made such Promise) in such Manner and Form as the said A. hath above thereof complained against him, nor also but that the said A. hath sustained Damages by Reason of the Non-performance of the said Promises and Undertakings to 50 l. as he the said A. hath above supposed in his Declaration; and thereupon the said A. prays that the Damages so acknowledged, together with his Expences and Costs laid out by him about his Suit in that Cause, may be awarded to him: Therefore it is adjudged that the said A. do recover against the said C. his said Damages above acknowledged to 50 l. and also 6 l. for his Expences and Costs awarded by the Court of our said Sovereign Lord the King now here to the said A. by his Consent, which said Damages, in the whole, amount to 56 l. and the said C. be amerced, &c.

A Writ of Inquiry.

George the Second, &c. to the Sheriff of Norfolk greeting. Whereas A. B. lately in our Court before us at Westminster, by Bill, without

without our Writ, impleaded *C. D.* being in the Custody of the Marshal of our *Marshalsea*, before us for this Cause (that is to say) that whereas the said *C. D.* on the first Day of *June*, in the fifth Year of our Reign, was indebted (and so go on as in the Declaration to the Words) to the Damage of the said *A.* 100 *l.* as he informs us, and such Proceedings were had in our Court before us, that the said *A.* ought to recover his Damages against the said *C.* by reason of the Premises. But because it is unknown to our Court before us, what Damages the said *A.* sustained on that Occasion, therefore we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said *A.* hath sustained as well on that Occasion, as for his Expences and Costs laid out by him about his Suit in this Cause; and the Inquisition which you shall take thereof, do you send to us at *Westminster*, on *Wednesday* next after three Weeks from the Day of *St. Michael*, under your Seal, and the Seals of those by whose Oaths you shall take such Inquisition; and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond*, the 12th Day of *June*, in the sixth Year of your Reign.

The Continuance and Return of the Inquisition.

At which Day came the said *A. B.* before our Sovereign Lord the King at *Westminster* by his said Attorney; and the Sheriff (that

is to say) Sir *P. M.* Knight, Sheriff of the said County of *S.* returned an Inquisition taken before him at the Castle of *V.* in the said County of *S.* on the tenth Day of *July*, in the sixth Year of the Reign of His present Majesty *George* the Second, King of *Great Britain*, &c. by the Oaths of twelve honest and lawful Men of his Bailiwick, by whom it is found, that the said *A. B.* hath sustained Damages occasioned by reason of the Premises, besides his Expences and Costs laid out by him about his Suit in this Cause, to 100 *l.* and for his Expences and Costs six Pence: Therefore it is adjudged, that the said *A.* do recover against the said *C.* his said Damages found by the said Inquisition, and also 8 *l.* 9 *s.* 6 *d.* awarded to him, with his Consent, by His Majesty's said Court now here, by way of Increase for his extraordinary Expences and Costs by him laid out in this Suit; which said Damages, in the Whole, amount to 115 *l.* and be the said *C.* amerced, &c.

A Writ of Inquiry in Trespass, where the Defendants pleaded Not guilty to Part, and justified as to the Residue, and Judgment for the Plaintiff on a Demurrer.

George the Second, to the Sheriff of *Norfolk* greeting. Whereas *W. S.* lately in our Court before us at *Westminster*, by his Bill, without our Writ, impleaded *W. S.* and *T. A.* being in the Custody of the Marshal of our *Marshalsea*, before us, for that they, on the twentieth Day of *March*, in the fifth Year of our
Reign,

Reign, with Force and Arms made an Assault upon the said *W.* at *D.* in your County, and then and there beat, wounded, ill-treated, took and imprisoned him, and there detained him in Prison for a long Time, (that is to say) for the Space of twenty Hours then next following, without any reasonable or lawful Cause, and against the Laws and Customs of this Kingdom, and until the said *W.* paid a Fine of five Shillings and six Pence to procure his Discharge, and then and there did other Wrongs to him, against our Peace, and to the Damage of the said *W.* 20 *l.* as he declares; and therefore he brought his Suit, &c. and such Proceedings are had in our Court before us, that the said *W.* ought to recover his Damages against the said *W. S.* and *T.* occasioned by the said Trespass, Assault, and Imprisonment of the said *W. S.* and there detaining him by the Space of Half an Hour, until the said *W. S.* paid a Fine of five Shillings and six Pence to the said *W. S.* and *T.* But because it is unknown to our Court before us what Damages the said *W. S.* hath sustained on that Occasion; therefore we command you, that by honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said *W. S.* hath sustained, as well by Occasion of the said Trespass, Assault, and Imprisonment of the said *W. S.* and detaining him for the Space of Half an Hour, until the said *W. S.* paid them the said Fine of five Shillings and six Pence, as for his Expences and Costs laid out by him about his Suit on that Occasion, and the Inquisition which you shall take thereon (as in the former.)

A Writ

A Writ of Inquiry after a Scire Facias against an Administrator, where the Defendant died before the Return of the first Writ of Inquiry.

*Recital of
the Decla-
ration.*

*Award of
the Writ of
Inquiry.*

George the Second, to the Sheriff of *Mid-
dlesex* greeting. Whereas *Robert* lately in
our Court before us at *Westminster* (that is
to say) in *Michaelmas Term*, in the fifth Year
of our Reign, impleaded *J. H.* then being in
the Custody of the Marshal of our *Marshat-
sea* before us, for this Cause (that is to say)
that whereas the said *John* and *Robert*, on the
twelfth Day of *April*, in the Year of our
Lord One thousand seven hundred and thirty,
at *Westminster* in your County, accounted to-
gether, between themselves (and so on as in
the Declaration) and such Proceedings were
had thereupon in our Court before us at
Westminster, that the said *Robert* ought to
recover his Damages occasioned by the not
performing the said several Promises and
Undertakings. But because it was unknown
to our Court before us what Damages the
said *Robert* had sustained by Reason of the
Premises, we commanded your Predecessor,
that by the Oaths of twelve honest and lawful
Men of your County, he should diligently
inquire what Damages the said *Robert* had
sustained, as well by Reason of the not per-
forming the said several Promises and Under-
takings, as for his Expences and Costs by him
laid out about his Suit in that Behalf; and
that the Inquisition which he should take
there-

thereupon, he should send to us at *Westminster*, on *Wednesday* next after fifteen Days from the Feast Day of *Easter*, under his Seal, and the Seals of those, by whose Oaths he should take such Inquisition, together with that Writ; and the same Day was given to the said *Robert* to be before us at *Westminster* aforesaid, as by the Record and Proceedings thereof in our same Court before us at *Westminster* may manifestly appear: And whereas on the Behalf of the said *Robert* it hath been shewn to us, that before the said *Wednesday* next after the said fifteen Days from the Feast Day of *Easter*, the said *J. H.* died intestate, and an Inquisition of the said Damages then remained to be taken; and that one *Mary H.* Widow and Relict of the said *John*, was Administratrix of all and singular the Goods and Chattels, Rights, and Credits which were of and belonged to the said *J. H.* her said late Husband, who died Intestate, as we have been informed by the said *Robert*; and because we were willing that those Things which were right and just should be done in our Court before us, to have a due Execution thereof, we commanded you, that by honest and lawful Men of your Bailiwick, you should cause it to be known to the said *Mary*, that she was to be before us at *Westminster* on *Saturday* next after the Morrow of the *Ascension* of our Lord, to shew Cause, if she knew of, or had any Thing to say for herself, why Damages ought not to be assessed for, and recovered by the said *R.* according to the Form and Effect of the Statute in such Case made and provided, if it should seem

The Death of the Intestate.

That Mary H. was Administratrix.

Award of the Scire Facias.

seem expedient for her so to do, and further to do and receive those Things that our said Court there before us should consider of in that Behalf; and that you should have there at the same Time the Names of those, by whose Oaths you should so cause it to be known to her, and that same Writ. At which Day the said *Robert*, by *N. S.* his Attorney, came before us at *Westminster*; and you our Sheriff of *Middlesex* made a Return to us, that by *R. N.* and *J. S.* honest and lawful Men of your Bailiwick, you had caused it to be known to the said *Mary*, that she was to appear before us at the Day and Place contained in the said Writ, to have shewn Cause, if she had or knew of any Thing to say for herself, why the said Damages ought not to have been assessed against her, and recovered by the said *R.* if she had thought it expedient so to do, according to the Tenor of the said Writ; which said *Mary*, being so warned and solemnly required to be here at that Day, likewise came by *J. B.* her Attorney; whereupon the said *Robert* prayed that his said Damages might be assessed and recovered by him in the said Action; and because the said *Mary* then said nothing, nor shewed or alledged any Cause to hinder final Judgment to be given in the said Action, or why Damages ought not to have been assessed in the said Action; therefore, at the Request of the said *Robert*, we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said *Robert* hath sustained, as well occasioned by the Premisses, as for his Expences and Costs laid out by him about

*The Return
of the Scire
Facias.*

*Award of
the Enquiry
de novo.*

about his Suit in that Behalf: And the Inquisition that you shall take thereon, do you send to us at *Westminster* on *Friday* next after the *Morrow* of *St. Martin*, under your Seal, and the Seals of them by whose Oaths you take such Inquisition, together with this Writ. Witness *Robert Lord Raymond* at *Westminster*, the twenty-third Day of *October*, in the sixth Year of our Reign.

If your Proceedings are by Original, then the Writ of Enquiry is the same as in the *Common Pleas*, only instead of saying, *was attached to appear in our Court before our Justices at Westminster*; you say, *was attached to appear in our Court before us*; and when you come to the Words, *and the Inquisition which you shall take thereon*, you say thus, *you shall send to us on the Octave of St. Hillary* (instead of a Day certain) *where-ever we shall then be in England*.

The Entry of a Non Prof. on a Latitat.

London, *H. A. B.* was arrested by Virtue of a Writ of *Latitat* of our Sovereign Lord the King, issuing out of the Court of our said Sovereign Lord the King, before the King himself, in *Easter Term* now last past, returnable before the said King himself at *Westminster*, on *Friday* next after the *Morrow* of the *Holy Trinity* now last past, to answer to *C. D.* in an *Action of Trespass*, and also to a *Bill* of

If the Writ was not bailable, I think it would be proper to say, A. B. was served with a Writ of Latitat, or Bill of Middlesex (as the Case is.)

the said *A.* exhibited according to the Custom of His said Majesty's Court, before the said King himself, against the said *C.* for a Debt of ten Pounds, and the said *A. B.* appeared at the same Day, by *William Unfreville* his Attorney, according to the Form of the Statute in such Case made and provided; and the said *C. D.* hath not Declared in the said Court of our said Sovereign Lord the King, before the King himself at *Westminster*, by his Bill, or Declaration, in any personal Action or Ejectment against the said *A. B.* before the End of *Trinity* Term, then next following, being the next Term after the Appearance of the said *A. B.* at the Suit of the said *C. D.* Therefore it is adjudged, that the said *C. D.* take no Benefit by his said Writ, but that he be amerced, &c. And it is further adjudged, that the said *A. B.* do recover against the said *C. D.* thirty Shillings for his Expences and Costs, laid out by him about his Defence in this Suit, awarded to the said *A. B.* by the Court of our said Sovereign Lord the King now here, according to the Form and Effect of the Statute in such Case made and provided, and that the said *A. B.* have his Execution against the said *C. D.* thereof, &c.

It has likewise been Entered thus, where it has been by Bill.

London, ff. A. B. who brought his Bill in an Action of Trespass, against *C. D.* (appearing by Virtue of his Majesty's Writ of *Latitat*, Issuing out of his Majesty's Court before the King himself, at the Suit of the said *A. B.*) doth not proceed

on his ſaid Bill; therefore 40 s. are adjudged (or awarded) to the ſaid C. by this His ſaid Maſteſty's Court, for his Expences and Coſts, according to the Form and Effect of the Statute, &c. and that he and his Pledges for proſecuting (to wit) *John Doe* and *Richard Roe*, be amerced, &c. and that the ſaid A. may depart the Court for ever diſmiſs'd thereof.

The Entry of a Non Prof. for Want of the Plaintiff's Entering the General Issue.

After the Words (*the ſaid A. puts himſelf on his Country; and the ſaid B. does likewise the ſame*) you go on thus; and the ſaid A. prays that the ſaid B. may reply to the Plea of him the ſaid A. whereupon the ſaid B. is directed by the Court of our ſaid Sovereign Lord the King now here, that he reply to the ſaid Plea, and enter the Iſſue joineſt in the ſaid Action on *Friday next after the Morrow of the Holy Trinity*, on the Peril attending the Neglect thereof; after wards this ſame Term, the ſaid A. came before our ſaid Sovereign Lord the King at *Westminster*, by his ſaid Attorney, and the ſaid B. altho' ſolemnly ſummoned, came not, but made Default, nor hath he replied to the Plea of the ſaid B. nor doth he further proſecute his Bill or Writ (as the Caſe is) againſt the ſaid B. Therefore it is adjudged, &c. as in the former.

The

The Manner of acknowledging Satisfaction on Record.

After the Entry of the Judgment, you go on thus, afterwards (that is to say) on Friday next after three Weeks from the Day of the Holy Trinity, came the said Plaintiff by Henry Cruwys his Attorney, before our Sovereign Lord the King at Westminster, and acknowledged to have had Restitution from the said C. D. of all Sums of Money which he the said A. B. hath been deprived of by Reason of the said Judgment; therefore be the said C. D. for ever acquitted of all such Sums of Money, &c.

The Entry of a Noli Prosequi after Issue joined.

Afterwards (that is to say) on the 25th of May, in the Sixth Year of the Reign of His present Majesty, came into this Court (the Plaintiff) by his said Attorney, and confessed that he intends no farther to prosecute (the Defendant) in the said Action; therefore the said Defendant may depart this Court for ever dismiss'd therefrom.

The Entry of a Remittitur Dampna after a Writ of Inquiry, where the Damages were taken on the first Promise only.

By which said Inquisition it is found, that the said Andrew hath sustained 20 l. Damages by Reason of the Premises, besides his Expences and Costs laid out by him about his

his Suit in that Particular, upon the first Promise in the said Declaration mentioned, upon the second Promise, 1 *d.* upon the third Promise, 1 *d.* upon the fourth Promise, 1 *d.* and upon the fifth Promise, 1 *d.* and for his Expences and Costs, 20 *s.* and thereupon the said *Andrew* doth here in Court *gratis* remit to the said *John* the said Peny, by Reason of not performing the said second Promise, and also the said Peny upon the said third Promise, and also the said Peny upon the said fourth Promise, and also the said Peny upon the said fifth Promise, found by the said Inquisition in the Manner as above; therefore be the said *John* acquitted of the said several Pence; and no regard being had to the said several Pence remitted in the Manner as above, it is adjudged that the said *Andrew* recover against the said *John* the Residue of the said Damages found by the said Inquisition in the manner as above, and also (*the Sum which the Costs are taxed at*) for his said Expences and Costs, awarded to the said *Andrew* with his Consent by the Court of our said Sovereign Lord the King, now here by Way of Increase; which said Damages in the whole amount to (*so much*) and be the said *John* amerced, &c.

The Entry of a Relicta verificatione.

At which Day came the said Parties by their said Attornies before our Sovereign Lord the King at *Westminster*, and thereupon the said *R. P.* relinquishing his Verification above pretended by the said *Robert* (or I would say thus) *refusing his pretended Averment*, saith that
ho

he cannot deny the Action of the said *Ralph* nor but that the said Writing is his Deed nor but that he owes the said *Ralph* the said 100*l.* in such Manner and Form as the said *Ralph* above declares against him, and acknowledges the said Declaration in every Thing to be expressly true: *Therefore it is adjudged* that the said *Ralph* recover against the said *Robert* the said Debt, and also 55*l.* for his Damages which he has sustained by Reason of the Detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Cause, awarded by this Court of our Sovereign Lord the King to the said *Ralph* by his Consent; and be the said *Robert* amerced, &c.

The Entry of a Remittitur Dampna, after an Inquisition.

At which Day came here the said *A. B.* by his said Attorney, and the Sheriffs, (to wit) *Sir John Friar* and *Sir John Ward* Knights, have sent here a certain Inquisition, taken before them at the *Guildhall* of the said City of *London*, situate in the Parish of *St. Laurence* in the Old *Jewry*, in the Ward of *Cheap* of the same City, on the 2d Day of *June* last past, by the Oath of Twelve, &c. by which it is found that the said *A. B.* sustained two Pence Damages, by Reason of the Non-performance of the said 1st and 2d Promises, besides their Expences and Costs laid out by him about his Suit in this Cause, and also 100*l.* 8*s.* 8*d.* Damages, occasioned

by reason of. Non-performance of the said
 st Promise, besides his Expences and Costs
 id out by him in this Cause, and for his Ex-
 pences and Costs, 27 s. 4 d. And thereupon
 e said *A.* doth here *gratis* in Court remit to
 e said *Thomas* the said 2 d. found by the
 id Inquisition upon the said first and second
 omises, in the Manner as above, and the
 expences and Costs laid out in that Particular;
 id he prays Judgment against the said *Tho-*
as for the said 100 l. 8 s. 8 d. Residue of the
 id Damages, and for the said 27 s. 4 d. for
 e said Expences and Costs found by the said
 quisation in the Manner aforesaid, and the
 crease thereof to be awarded to him, &c.
 herefore; the said 2 d. being remitted, de-
 cted, and abated, *it is adjudged*, that the
 id *A.* do recover against the said *T.* the said
 00 l. 8 s. 8 d. occasioned by the Non-perfor-
 ance of the said last mentioned Promise, and
 e said 27 s. and 4 d. for their Expences and
 osts, likewise found by the said Inquisition,
 the Manner aforesaid, and also 8 l. 4 s. a-
 rded by this Court to the said *A.* at his
 equest, for his Expences and Costs by way of
 crease: Which said Damages in the whole
 ount to 110 l. and be the said *Thomas* a-
 rced, &c. and be the said *Thomas* acquitted
 the said 2 d. deducted in the Manner afo-
 id, &c.

Judgment

Judgment for the Plaintiff, upon a Demurrer in Abatement.

At which Day the said Parties came before our Sovereign Lord the King at *Westminster* by their said Attorney; whereupon all and singular the Premises being viewed, and fully understood and considered by the Court of our said Sovereign Lord the King now here, and on mature Deliberation had thereupon, it appears to the said Court of our said Sovereign Lord the King now here, that the said Declaration, and the Subject Matter therein contained, are in Law good and sufficient for him the said *John* to maintain his said Writ thereof against the said *Richard*; for which Cause the said *John* ought to recover his Damages &c. as in the former.

A Non. prof. for not Declaring after Cause removed by Habeas Corpus.

London, R. H. B. the Younger, who was arrested by Virtue of a certain Plaint, levied in the Court of our Sovereign Lord the King, held at *London* aforesaid, in the Guildhall of the said City, on the twenty-third Day of *November*, in the fifth Year of the Reign of our said Sovereign Lord the King before Sir J. S. Knight, one of the Sheriffs of the said City of *London*, against the said H. at the Suit of J. T. in a certain Action

of Trespass upon the Case, to the Damage
of the said *J.* five hundred Pounds; and for
want of sufficient Manucaptors and Security,
to answer to the said *J.* in the said Action,
he was detained in the Prison of our said
Sovereign Lord the King, under the Custody
of the said *J. S.* Knight, then one of the said
Sheriffs of the said City, for the above-
mentioned Cause; and afterwards, (*viz.*) on
the tenth Day of *December*, in the said fifth
Year, he the said *Henry*, by virtue of a cer-
tain Writ *de Habendo Corpus cum Causa*, of
our said Sovereign Lord the King, directed
to the Mayor, Aldermen, and Sheriffs of
the said City of *London*, and issuing out of
the Court of our said Sovereign Lord the
King, before the King himself at *Westminster*,
in the County of *Middlesex*, was by the
said *J. S.* then one of the Sheriffs of the
said City, carried before Sir *Francis Page*
Knight, one of His Majesty's Justices as-
signed to hold Pleas in the Court of our
said Sovereign Lord the King, before the
King himself, at his Chambers situate in
Serjeants Inn in *Fleetstreet*, *London*, and was
by the said Justice then and there, for want
of sufficient Bail and Security, committed
to the Custody of the Marshal of the
Marshalsea of the said Court of our said
Sovereign Lord the King, before the King
himself, to answer to the said *J. T.* in the
said Action, at the Suit of the said *J. T.*
and the said *Henry* so being in the Custody
of the Marshal of the said *Marshalsea*, he
the said *J. T.* hath not within three Terms
after the Committing the said *Henry* to the
Custody

Custody of the said Marshal, at the Suit of the said *J. T.* as aforesaid, exhibited in the said Court of our said Sovereign Lord the King, before the King himself, his Bill or Declaration in any Action whatsoever; nor doth the said *J. T.* further prosecute his said Plaint against the said *Henry*: Therefore it is adjudged, that the said *J. T.* take nothing (or have no Benefit) by his said Plaint, but be he and his Pledges for the Prosecution, (to wit) *John Doe* and *Richard Roe*, amerced, &c. and be the said *Henry* therefrom for ever dismissed, &c.

A Non Prof. for not joining in Demurrer.

After the Demurrer the Entry is thus: And hereupon the said *John* prays that the said *Joseph* may join in Demurrer with the said *John*; and a Day therefore is given by the Court of our said Sovereign Lord the King now here, to the said *Joseph*, before our Sovereign Lord the King at *Westminster*, until *Thursday* next after the *Octave* of *St. Hillary* then next following, to join in Demurrer in Law with the said *John*; and the said *Joseph* being solemnly summoned came not at that Day, nor doth he further prosecute his said Bill against the said *John*, but made Default: Therefore it is adjudged that the said *Joseph* take nothing (or no Benefit) by his said Bill, but that he and his Pledges for prosecuting (to wit) *John Doe* and *Richard Roe*, be amerced, &c. and be the said *John* from thence thereof for ever dismissed. And it is further adjudged by the said Court of our said

Sovereign Lord the King now here, that the said *John* do recover against the said *Joseph* six Pounds for the said *John*'s Expences and Costs laid out by him in defending the said Action, awarded to the said *John* by the said Court of our said Sovereign Lord the King, according to the Form and Effect of the Statute in such Case made and provided; and the said *John* may have an Execution thereof, &c.

A Non Prof. for want of a Plea in Bar to the Avowry.

After the Plea in Bar to the Avowry, (you go on thus) And thereupon the said T. C. prays that the said L. may plead in Bar to the Avowry of the said Thomas; whereupon a Day, (to wit) till Monday next after the Ascension of our Lord, is given by the said Court of our said Sovereign Lord the King to the said J. L. to plead in Bar to the said Avowry of the said T. C. and the said J. L. is by the said Court of our said Sovereign Lord the King now here directed, that he at that Day plead in Bar to the said Avowry, under the Peril attending the Neglect thereof; at which Day comes the said Thomas before our Sovereign Lord the King at Westminster by his said Attorney; and the said J. L. tho' solemnly required, comes not at this Day, nor replies to the said Plea of the said T. C. nor doth he further prosecute his said Writ against the said T. C. Therefore it is adjudged that the said J. L. take

G

nothing

nothing (or no *Benefit*) by his said Writ, but that he and his Pledges for prosecuting (to wit) *John Doe* and *Richard Roe*, be therefore amerced, &c. and the said *T. C.* may depart thence for ever dismiss'd therefrom, &c. And it is further adjudged by the said Court of our said Sovereign Lord the King now here, that the said *T. C.* do recover against the said *J. L.* (the Sum taxed for Costs) for his Expences laid out by him about his Defence in this Cause, by this Court of our said Sovereign Lord the King awarded to the said *T. C.* according to the Form and Effect of the Statute in such Case made and provided, &c. and the said *T. C.* may have an Execution, &c.

A Non Prof. for not declaring in Replevin.

Surry, ff. *G. H.* was summon'd to answer to *A. M.* in an Action, wherefore he took the Goods and Chattels of the said *A. M.* (to wit) four Rugs, four Blankets, &c. so naming the Goods, and detained them against Sureties and Pledges, &c. and whereupon the said *G.* in his proper Person appear'd himself the fourth Day against the said *A. M.* in the said Action, and the said *A. M.* altho' solemnly summoned, came not, but made Default: Therefore it is adjudged that the said *G. H.* may depart, thereof for ever dismiss'd, and that the said *A. M.* and her Pledges for prosecuting (to wit) *John Doe* and *Richard Roe*, be amerced, &c. the Names of

the Plaintiff's Pledges, &c. and that the said G. have a Return of the said Goods and Chattels, &c.

Executions.

A Capias ad Satisfaciendum.

George the Second, &c. to the Sheriff of S. Greeting. We command you that you take *C. D.* if he shall be found in your Bailiwick, and safely keep him, so that you have his Body before us at *Westminster* on *Monday* next after three Weeks from the Day of *St. Michael*, to make Satisfaction to *A.* of a Debt of 20*l.* which the said *A.* lately recovered in our Court before us, and also for 33*s.* and 4*d.* which were awarded to the said *A.* in our Court, before us, for his Damages which he sustained, as well occasioned by the Detainer of (or as well by Occasion of Detaining) the said Debt, as for his Expences and Costs laid out by him about his Suit in that Behalf; whereof the said *C. D.* is convicted, as appears to us of Record; and have you there at the same Time this Writ. Witness *Robert Lord Raymond*, at *Westminster*, the twenty eighth Day of *June*, in the fifth Year of our Reign.

If in *Assumpsit*, you say, occasioned as well by not performing certain Promises and Undertakings made to the said *A.* by him the said *C.* as also for his Expences

The Attorney's

pences and Costs, &c. as in the other
(*Mutatis mutandis.*)

If in *Trespafs on the Case generally*, then say, occasioned as well by a certain *Trespafs on the Case* committed against the said *A.* by him the said *C.* as also, &c.

If in *Trespafs only*, occasioned by a certain *Trespafs* lately committed on the said *A.* by him the said *C.* As also, &c.

If in *Covenant*, occasioned as well by the Breach of certain *Covenants* lately made by the said *C.* to the said *A.*

If in *Ejectment*, occasioned as well by a certain *Trespafs* and *Ejectment* lately committed against the said *A.* by him the said *C.* as also, &c.

A Testatum Ca' Sa'.

George the Second, &c. to the Sheriff of *Suffolk*, Greeting. Whereas we lately commanded our Sheriff of *S.* that he should take *C.D.* if he could be found in his Bailiwick, and that he should safely have kept him, so that he might have had his Body before us at *Westminster*, at a certain Day now past, to make Satisfaction to *A. B.* for a Debt of ten Pounds, which the said *A.* hath lately recovered in our Court before us; and also thirty Shillings and eight Pence, which were awarded to the said *A.* in our Court before us, for his Damages which he sustained, occasioned

caſioned as well by the detaining his ſaid Debt, as for his Expences and Coſts laid out by him in proſecuting his Suit in that Behalf; whereof the ſaid C. is convicted, as appears to us of Record; and our ſaid Sheriff made a Return to us at that Day, that the ſaid C. was not to be found in his Bailiwick; whereupon, on the Behalf of the ſaid A. it is ſufficiently testified in our Court before us, that the ſaid C. wanders about, and lurks up and down in your County: Therefore we command you, &c. as in the former.

On a Non Prof.

To make Satisfaction to the ſaid C. then you ſay, for five Pounds according to the Form of the Statute in that Caſe made and provided, awarded to the ſaid C. in our Court before us for his Expences and Coſts in a certain Action (of Debt or Treſpaſs upon the Caſe, as the Nature of the Action is) againſt the ſaid C. at the Suit of the ſaid A. forasmuch as the ſaid A. hath not proſecuted his ſaid Action: And have you there, at the ſame Time, this Writ, &c.

Ca' Sa' for Coſts againſt the Plaintiff after a Verdict.

To make Satisfaction to C. D. for 33 s. 4 d. awarded to the ſaid C. according to the Form of the Statute in that Caſe made and provided, for his Expences and Coſts laid out by him in making his Defence in a certain Action of Debt againſt the ſaid C. at the Suit of the ſaid A. and have you there this Writ, &c.

The Attorney's

For an Administrator.

To make Satisfaction to *A. B.* Gent. Administrator of all and singular the Goods and Chattels, Rights and Credits, which lately were of, and belonged to *C. D.* deceased, who died Intestate for a Debt of ten Pounds, and also *(the Costs allowed)* for his Damages which he sustained, as well occasioned by the Detainer of the said Debt, as for his Expences and Costs laid out by him in prosecuting the said Suit, and whereof the said *C.* is convicted, as appears to us of Record: Wherefore it is adjudged in our same Court before us, that the said *A.* have his Execution thereof; and have you there this Writ. Witness, &c.

Ca' Sa' upon a Judgment affirmed after a Writ of Error upon a Judgment in the Time of the late King.

George the Second, &c. to the Sheriff of Lincoln, Greeting. We command you, that you take *T. A.* late of *Fulstowe* in your County, Gentleman, otherwise called, &c. if he shall be found in your Bailiwick, and safely keep him, so that you have his Body before us, at the Return, *(which must be general (viz.) on the Octave of St. Hillary)* wheresoever we shall then be in England, to make Satisfaction to *F. B.* for a Debt of ten Pounds, which the said *Francis*, lately in the Court of our late beloved Father George, late King of Great Britain,

Britain, &c. before Sir Robert Eyre, Knight, and his Companions, Justices of the Court of Common Bench at Westminster, recovered against him; and also for 15 l. for his Damages which he sustained, as well by Reason of the detaining of the said Debt, as for his Expences and Costs laid out by him about his Suit in that Behalf, whereof the said Thomas is convicted, as by the Inspection of the Record and Proceedings thereof (which in the same Court of the said late King, before the said late King himself, the said late King caused to be brought before him with certain Causes of Error, and which in the same Court of our said late Predecessor, before the said late King himself, is in all Things affirmed) it appears to us of Record now remaining before us; and also for 10 l. 10 s. which were awarded to the said Francis in the said Court of the said late King, before the said late King himself, according to the Form of the Statute in that Case made and provided, for Damages, Expences, and Costs, which the said Francis had sustained by Reason of the Delay of the Execution of the said Judgment, by means of the said Thomas's prosecuting the said Writ of the same late King, for correcting Errors sued out of, and upon the Premises as aforesaid, whereof the said Thomas is likewise convicted, as also appears to us of Record; and have you there this Writ. Witness Robert Lord Raymond, &c.

Ca' Sa' on a Judgment on a Scire Facias, wherefore Execution ought not, &c. after a Non Prof. upon a Writ of Error.

George the Second, &c. to the Sheriffs of London, Greeting. We command you, that you take *Eliz. S.* late of *London*, Widow, if she shall be found in your Bailiwick, and safely keep her, so that you have her Body before us in three Weeks from the Day of *St. Michael*, wheresoever we shall then be in *England*, to make Satisfaction to *S. E.* for six Pounds and ten Shillings, which were awarded to the said *Sarah* in our Court before us, according to the Form of the Statute in such Case made and provided, for her *Damages, Expences, and Costs*, which she sustained by Reason of the Delay of the Execution of a certain Judgment lately obtained for 26 l. by the said *Sarah* against the said *Eliz.* in our Court of *Common Bench*, before *Sir Robert Eyre*, Knt. and his Companions our Justices of the said *Common Bench* at *Westminster*, as by the Record and Proceedings of the said Judgment (which we lately caused to be brought into our said Court before us, with certain Causes of Error) now remaining in our Court before us, manifestly appears to us of Record; and for that the said *Eliz.* afterwards in our Court before us, did not prosecute her said Writ, as also appeareth to us of Record; and that you have there at the same Time this Writ. Witness, &c.

A Capias

A Capias ad Satisfaciendum for an Administrator for the Residue in Case, with a Recital of a Fieri Facias in London, and another in Middlesex, and the Sheriff of Middlesex's Warrant to the Bailiff of the Liberty of Westminster, who levied Part, notwithstanding Writs of Error and Superfedeas.

George the Second, &c. to the Sheriffs of London, Greeting. Whereas by our Writ we lately commanded you that you should cause to be levied of the Goods and Chattels of *T. B. Esq;* in your Bailiwick, 300*l.* 6*s.* which *Ruth W. Widow*, Administratrix of all and singular the Goods and Chattels, Rights and Credits, which were of *R. W.* her late Husband, deceased, lately in our Court before us at Westminster, recovered against him for her Damages which she sustained, occasioned as well by not performing several Promises and Undertakings lately made by the said *T.* to the same *Ru.* as Administratrix of the said *Ro.* as also for her Expences and Costs laid out by her about her Suit in that Behalf, whereof the said *T.* is convicted, as appeareth to us of Record, and that you should have that Money before us at a certain Day now past, to render to the said *Ru.* for her said Damages, Expences and Costs, notwithstanding our Writ of *Error*, and our Writ of *Superfedeas*, thereupon issued; and you at that Day thereupon made a Return to us, that the said *T.* had no Goods or Chattels in your Bailiwick, whereby you were able to

Testatum
Fieri Fa-
cias to the
Sheriff of
Middlesex.

That the
Sheriff re-
turned, he
had made
a Mandate
to the Bai-
liff of West-
minster.

Who had
levied 86l.
15s.

levy the said Damages, Expences and Costs, or any Part thereof; whereupon, on the Part and Behalf of the said *Rush*, it was sufficiently testified before us in our Court at *Westminster*, that the said *Tbo.* had sufficient Goods and Chattels in our County of *Middlesex*, whereby the Sheriff of the said County might cause to be levied the said Damages, Expences, and Costs: Wherefore we commanded the said Sheriff of *Middlesex*, that he should cause to be levied of the Goods and Chattels of the said *Tbo.* in his Bailiwick, 300 l. 6 s. for her said Damages, Expences, and Costs, that he should have there that Money before us at *Westminster* on the *Octave* of *St. Hillary*, to render to the said *Rush* for her said Damages, Expences and Costs, notwithstanding our said Writ of *Error*, and our Writ of *Superfedeas*, issued as above: And our said Sheriff of *Middlesex* at that Day made a Return to us, that for the Execution to be made of the said Writ to him directed, he had directed the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *Saint Peter Westminster*, (who hath full Execution of all Warrants, Writs, and Mandates within that Liberty) to whom the said Bailiff (that is to say) *G. W. Esq;* gave him this Answer, That he had caused to be levied of the Goods and Chattels of the said *T.* 86 l. 15 s. Parcel of the said Debt and Damages, which said Money he had ready before us at the Day and Place aforesaid, to render to the said *Rush*, in Part of her said Debt and Damages: And he further certified to us, that the said *T.* had no other or more Goods or Chattels

Chattels in his Bailiwick, whereof he was able to cause to be levied the Residue of the said Debt and Damages, or any Part thereof: Therefore we command you, that you take the said *Thomas*, if he shall be found in your Bailiwick, and safely keep him, so that ye have his Body before us at *Westminster* on *Monday* next after fifteen Days from the Feast-day of *Easter*, to make Satisfaction to the said *Rush* for 213 l. 11 s. Residue of the said 300 l. 6 s. for the Damages aforesaid; and have you there at that Time this Writ. Witness *Robert Lord Raymond*, the 12th Day of *February* in the sixth Year of our Reign,

A Capias ad Satisfaciendum for the Residue.

A Capias ad Satisfaciendum after a Fieri Facias, on a Recognizance after a Judgment affirmed on a Writ of Error against two Defendants, one of which was returned dead, for the Residue of the Money due, Part having been levied by the Bailiff of Westminster, by Virtue of a Fieri Facias.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas by our Writ we lately commanded you, that of the Lands and Chattels of *W. P.* of the Parish of *Saint Margaret's Westminster* in your County, Genl. in your Bailiwick, you should cause to be made 100 l. and of the Lands and Chattels of *J. B.* of *in your County, Genl.* you should cause to be made 100 l. to render to *T. F.* according to the Form and Effect of an Award of an Execution upon a certain Recognizance

Setting forth a Fieri Facias.

cognizance acknowledged by the said *W. P.* and *J. B.* to the aforesaid *J. F.* in our Court before Sir Peter King Knt. and his Companions, our Justices of the *Common Bench* at *Westminster*, as by the Record and Proceedings of the Award of the said Execution, which we caused to be brought into our Court before us at *Westminster*, with certain Causes of Error, it appears to us of Record; and also 12 l. which were awarded to the said *J. F.* in our same Court, before us, according to the Form of the Statute in that Case made and provided, for his Damages, Expences, and Costs, which he had sustained by Occasion of the Delay of the Execution of the said Judgment, by Means of prosecuting our certain Writ of correcting Errors sued out by the said *W.* and *J. B.* of and concerning the Premises as aforesaid; whereof the said *W.* and *J. B.* are convicted, as likewise appears to us of Record; and that you should have that Money before us in three Weeks from the Day of St. Michael, whereforever we should then be in England, to render to the said *J. F.* for the said Debt, Damages, Expences, and Costs; and you having at that Day made a Return to us, that, in order to have a due Execution to be made of the said Writ (to you directed) you had directed the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of St. Peter *Westminster*, who hath full Execution of all Warrants, Writs, and Mandates (within that Liberty) to whom the said Bailiff (that is to say) *G. W. Esq;* gave you this Answer: That he had caused to be levied of the Goods and Chattels of the said *J. B.* 4 l. 4 s. Parcel of the

A Return
of Mandavi
vi Ballivo.

the said Debt and Damages, which said Money he had ready before us at the Day and Place aforesaid, to render to the said J. F. in Part of the said Debt and Damages: And further, you certified to us, that the said J. B. had no other or more Goods or Chattels in your Bailiwick, whereof you was able to cause to be levied the Residue of the said Debt and Damages, or any Part thereof; and that the said W. is dead: Therefore we command you that you take J. B. if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before us on the *Ottave* of St. Hillary, wheresoever we shall then be in England, to make Satisfaction to the said J. F. for 107 l. 10 s. Residue of the said 112 l. his said Debt, Damages, Expences, and Costs; and have you there, at the same Time, this Writ. Witness, &c.

The Bailiff's Return, that he had levied Part.

A Testatum Capias ad Satisfaciendum at the Suit of Husband and Wife, upon a Judgment recovered by her as Executrix, upon a Promise made to her former Husband, revived by her and her Husband by Scire Facias.

George the Second, &c. to the Sheriff of Middlesex, Greeting. Whereas Elizabeth Grove, Widow, Executrix of the last Will and Testament of John Grove her late Husband, deceased, in the Court of our dearly beloved Father, George, late King of Great Britain, before the said late King himself at Westminster, by the Judgment of the same Court recovered

*Recital of
the Judg-
ment.*

*That the
Plaintiff's
Wife mar-
ried the
Plaintiff.*

*Judgment
and an A-
ward of
Execution.*

*Recital of
a 2^d S^d
to the Sher-
iffs of
London.*

Testat.

covered against *J. Gyle*, 43 l. 9 s. 9 d. for her Damages which she had sustained, occasioned as well by not performing certain Promises and Undertakings made to the said *John* in his Life-time by the said *J.* as also for her Expences and Costs laid out by the said *Elizabeth* about her Suit in this Behalf, whereof the said *Jo.* is convicted, as appeareth to us of Record: And the said *Elizabeth*, after this Court's giving the said Judgment, took to Husband one *William Reeves*, and had taken out no Execution on the said Judgment: Therefore in our Court before us at *Westminster*, it was considered, that the said *William* and *Elizabeth* might have their Execution against the said *J.* for the Damages aforesaid, according to the Force, Form, and Effect of the said Recovery, as likewise appeareth to us of Record; and we thereupon, by our Writ, lately commanded the Sheriffs of *London*, that they should take the aforesaid *J.* if he could have been found in their Bailiwick, and safely to have kept him, so that they might have had his Body before us at *Westminster* at a certain Day mentioned in the same Writ, to satisfy to the said *William* and *Elizabeth* for the Damages aforesaid; and our said Sheriffs of *London* at that Day returned to us, that the said *J.* was not to be found in his Bailiwick; upon which, on the Behalf of the said *William* and *Elizabeth*, it is sufficiently testified in our Court before us, that the said *J.* lurks and wanders up and down in your County: Therefore we command you, that you take him, if he shall be found in your Bailiwick, and safely keep him, so that

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that you have his Body before us at *Westminster*, on *Thursday* next after fifteen Days from the Day of *St. Martin*, to make Satisfaction to the said *William* and *Elizabeth* for the Damages aforesaid; and have you there, at that Time, this Writ, &c.

Writs of Fieri Facias.

A Fieri Facias in Debt.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting. We command you that you cause to be made of the Goods and Chattels of *C. D.* and if on a Bond, then say, (otherwise called, &c.) as in the Bond, in your Bailliwick, One hundred Pounds, which *A. B.* lately in our Court before us at *Westminster*, recovered against him for a Debt; and also (the Sum awarded for Costs) which were awarded to the said *A. B.* in our same Court before us, for his Damages which he sustained, occasioned as well by detaining of his said Debt, as for his Expences and Costs laid out by him in and about his Suit in that Behalf, whereof the said *C.* is convicted, as appears to us of Record; and have you the said Monies before us at *Westminster* on *Monday* next after three Weeks from the Day of *St. Michael*, to render to the said *A.* his Debt and Damages aforesaid; and have you there, at the same Time, this Writ. Witness *Robert* Lord *Raymond*, the twenty-eighth Day of *June*, in the sixth Year of our Reign.

If the Proceedings are by Original, then say;

And have you the Money before us in three Weeks from the Day of *St. Michael*, whereforever we shall then be in *England*, to render, &c.

If in Case upon a Promise, then you must say;

One hundred Pounds, which *A.* hath lately recovered against him in our Court before us at *Westminster*, for his Damages which he sustained, occasioned as well by the not performing certain Promises and Undertakings, or a certain Promise and Undertaking, (*as the Case is*) lately made by the said *C.* to the said *A.* as for his Expences and Costs, *as before.*

If in Covenant.

For his Damages which he sustained, as well by reason of breaking of a certain Covenant, or certain Covenants (*as the Case is*) lately made between the said *C.* and the said *A.* as also for his Expences and Costs, &c.

In Ejectment.

For his Damages which he sustained by reason of a certain Trespass and Ejectment, or certain Trespasses and Ejectments (*as the Case is*) committed against the said *A.* by the said *C.* with Force and Arms, and against our Peace, at *E.* in your County.

In Trespass.

By reason of a certain Trespass committed against the said C. with Force and Arms, and against our Peace, at E. in your County.

If against an Administrator.

That you cause to be made One hundred Pounds of the Goods and Chattels which were of G. H. deceased, at the Time of his Death, in the Hands and Custody of E. T. Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the said G. H. at the Time of his Death, who died Intestate, being in your Bailiwick; which A. B. lately in our Court, (as before to the Words, whereof he is convicted, as appears to us of Record) if he should have so much in his Hands; and if he should not have so much in his Hands, then the Damages aforesaid (if it be in Debt.)

If in Case, then say, the said Expences and Costs, because the whole Demand in Case consists of Damages of the proper Goods and Chattels of the said E. T. and have you the Money, as before.

If against an Executor.

That you cause to be made of the Goods and Chattels, which were of the said G. H. deceased, at the Time of his Death, in the Hands of E. T. Executor of the last Will and Testa-

Testament of the said G. H. in your Bailiwick, as before.

If against the Plaintiff, for Costs awarded to the Defendant.

That you cause to be made ten Pounds of the Goods and Chattels of *A. B.* in your Bailiwick, which were by this Court awarded, according to the Form of the Statute in such Case made and provided, to *C. D.* for his Expences and Costs, in his Defence in a certain Action of Trespas at the Suit of the said *A.* and have you the Money before us at *Westminster*, on *Monday* next after three Weeks from the Day of *St. Michael*, to render to the said *C.* for his Expences and Costs aforesaid; and have you there, at the same Time, this Writ. Witness, &c.

A Testatum Fieri Facias in Debt.

George the Second, &c. to the Sheriff of Norfolk, Greeting. Whereas we lately commanded our Sheriff of *Middlesex*, that he should cause to be made of the Goods and Chattels of *C. D.* in his Bailiwick, One hundred Pounds, which *A. B.* lately in our Court before us at *Westminster*, recovered against him for a Debt; and also (so much as the Costs are taxed at) which lately, in our same Court before us, were awarded to him for his Damages which he sustained, occasioned as well by the detaining of his said Debt, as for his Expences and Costs laid out by him about his Suit in that Behalf, whereof the

said C. is convicted, as appears to us of Record; and that he should have the Money before us at *Westminster*, on *Monday* then next after three Weeks from the Day of *St. Michael* now last past, to render to the said A. for the Debt and Damages aforesaid; and our said Sheriff of *Middlesex* made a Return to us at that Day, that the said C. had not any Goods or Chattels in his Bailiwick, whereof he could cause to be levied the said Monies; whereupon, on the Behalf of the said A. it is sufficiently testified in our Court before us, that the said C. hath Goods and Chattels sufficient in your Bailiwick, whereof you may cause to be levied the said Monies: Therefore we command you, that you cause to be levied the said 100*l.* of the Goods and Chattels of the said C. in your Bailiwick, for the said Debt, &c. as in the former, p. 135.

A Fi' Fa' against Bail.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting. We command you, that of the Goods and Chattels of *R. T. J. W.* (*Manucaptors*) for *A. R.* in your Bailiwick, you cause to be made 120*l.* for a Debt which *E. P.* lately in our Court before us at *Westminster*, recovered against the said *A. R.* and also fifty Shillings, which, in our same Court, were awarded to the said *E. P.* for his Damages which he sustained, as well by reason of detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Particular, whereof the said *A. R.* is convicted, as appears to us of Record;

cord; and whereupon it was adjudged in our
 same Court before us at *Westminster*, that the
 said *E. P.* might have an Execution against the
 said *R. T.* and *J. W.* for the said Debt and
 Damages, according to the Force, Form, and
 Effect of a certain *Recognizance* acknowledg-
 ed by them the said *R. T.* and *J. W.* in our
 said Court before us, for the said *A. R.* at the
 Suit of the said *E. P.* as likewise appears to
 us of Record; and have you the Monies before
 us at *Westminster*, on *Monday* next after the
Ostave of *St. Hillary*, to render to the said
E. P. for his Debt and Damages aforesaid,
 and have you there, at the same Time, this
 Writ. Witness, &c.

A Fieri Facias on a Judgment on a Recognizance of Bail in the Common Bench after an Affirmance of the same on a Writ of Error in the King's Bench.

George the Second, &c. to the Sheriffs of
London, Greeting. We command you, that of
 the Goods and Chattels of *W. T.* of the Pa-
 rish of *St. Margaret's Westminster*, in your
 County, Gentleman, being in your Bailiwick
 and of the Goods and Chattels of *J. B.* of
Grange-Court, Lincoln's-Inn-Fields, in your
 County, Gentleman, you cause to be made
 One hundred Pounds, to be rendred to *J. F.*
 according to the Form and Effect of the
 Ward of an Execution upon a certain *Recognizance*
 acknowledged by the said *W. T.* and
J. B. to the said *J. F.* in our Court before
Sir Peter King Knt. and his Companions
 Justices of the *Common Bench* at *Westminster*

as by the Record and Proceedings of the Award of the Execution thereof (which we caused to be brought into our Court before us at *Westminster*, with certain Causes for correcting Errors in the same) it appeareth to us of Record, and which in our Court before us is now in all Things affirmed, as likewise appeareth to us of Record; and also 62 l. which were awarded to the said *J. P.* in our same Court, according to the Form of the Statute in that Case made and provided, for his Expences and Costs which he sustained by Reason of the Delay of the Execution of the Judgment aforesaid, by Means of prosecuting our said Writ for correcting Errors sued out as aforesaid by the said *W. T.* and *J. B.* at and upon the Premises, whereof the same *W.* and *J. B.* are convicted, as likewise appears to us of Record; and have you the Monies before us in three Weeks from the Day of the *Holy Trinity*, wheresoever we shall then be in *England*, to be rendered to the said *J.* for his said Debt, Damages, Expences, and Costs; and have you here likewise, at the same Time, this Writ. Witness, &c.

Fieri Facias for triple Damages of Tithes.

George the Second, &c. to the Sheriff of *Norfolk*, Greeting. We command you, that of the Lands and Chattels of *James Denton*, late of *Blowfield* in your County, Malster, in your Bailiwick, you cause to be levied 62 l. 17 s. which were awarded in our Court before us at *Westminster*, to *Robert Reeve* Clerk, for the triple

triple Value of certain Tithes of Grain springing, growing, and renewing from certain Lands in *Blowfield* in your County, taken and carried away by the said *James*, contrary to the Form of the Statute in that Case made and provided; and have you those Monies before us at *Westminster*, on *Friday* next after the Morrow of the *Holy Trinity*, to render to the said *Charles* the said 62 l. 17 s. whereof the said *James* is convicted, as appears to us of Record; and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond*, &c.

A Fieri Facias de bonis Ecclesiasticis.

George, &c. To the Reverend Father in God, Thomas Lord Bishop of Lincoln, Greeting. We command you, that of the Ecclesiastical Goods of *J. W.* (otherwise called *J. W. Master of Arts, Rector of the Rectory of Rand,* otherwise *Rann*) in your Diocese, you cause to be levied 400 l. for a Debt which *W. F.* lately recovered in our Court before us at *Westminster* against him, and also 40 l. for his Damages which he sustained, occasioned as well by Detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Cause, whereof the said *John* is convicted, as appears to us of Record; and have you that Sum of Money before us at *Westminster*, on *Wednesday* next after one Month from the Feast-day of *Easter*, to render to the said *W.* for his said Debt and Damages, whereof the said *J.* is convicted as aforesaid; and forasmuch as our Sheriff of *London* hath returned to us at *Westminster*, on

the Monday next after the Oclave of St. Hillary last, that the said J. W. is a beneficed Clerk in your Diocese, having neither any Goods, or Chattels, or Lay-Fee in their Bailiwick, whereof the said Debt and Damages, or any Part thereof, could in any wise be made and levied; and have you there, at the same Time, this Mandate. - Witness, &c.

A Fieri Facias in Debt upon a Bond for an Administrator after a Scire Facias, upon a Judgment of the Court of Common Pleas, affirmed upon a Writ of Error in the King's Bench, in the Life of the Intestate.

George the Second, &c. to the Sheriffs of London, Greeting. We command you, that you cause to be made of the Goods and Chattels of S. F. late of London, Merchant, otherwise called (*as he is mentioned in the Bond*) in your Bailiwick, One thousand Pounds for a Debt which G. P. now deceased, in his Lifetime, late in our Court before Sir Robert Fyre Kt. and his Companions, our Justices of our Court of Common Bench at Westminster, by our Writ, and by the Judgment of the same Court, recovered against him; and also 15 l. 10 s. awarded to the said G. P. with his Consent, by our said Court of Common Bench, for his Damages which he sustained by Reason of detaining the said Debt, whereof the said S. F. is convicted, *as by the Inspection of the Record and Proceedings thereof* (which were caused to be brought into our Court before us at

at *Westminster*, by Virtue of our Writ for correcting Errors, sued out by the said *Simon*, of and upon the Premises, and which in our Court before us is in all Things affirmed) it appeareth to us of Record, as also 141. which, in our same Court before us at *Westminster*, according to the Form of the Statute in that Case made and provided, were awarded to the said *G.* for his Damages, Expences, and Costs, which he sustained by Reason of the Delay of the said Execution, by Means of prosecuting our said Writ of Error sued out as aforesaid, by the said *Simon*, of and upon the Premises, and whereof the said *Simon* is convicted, as appears to us of Record: And whereas the said *G. P.* afterwards (that is to say) on the first Day of *March*, in the twelfth Year of our Reign, died intestate, not having had any Satisfaction for his said Debt, Damages, Expences, and Costs, or any Part thereof; after whose Death (that is to say) on the fifth Day of *March* in the said twelfth Year of our Reign, at *London* aforesaid, Administration of all and singular the Goods and Chattels, Rights and Credits, which were of and belonged to the said *G. P.* at the Time of his Death, by *Thomas*, by Divine Providence, Lord Archbishop of *Canterbury*, Primate and Metropolitan of All *England* (to whom the Commission of the said Administration aforesaid of Right belonged) was committed to *E. P.* Widow and Relict of the said *G. P.* in due Form of Law: And wherefore, in our same Court before us, is adjudged, that the said *E.* may have Execution against the said *Simon* for the Debt and Damages

Damages, Expences, and Costs aforesaid, as also for seven Pounds for her Expences and Costs by our Court before us at *Westminster*, according to the Form of the Statute in that Case made and provided, awarded to the said *E.* whereof the said *Simon* is convicted, as it appears likewise to us of Record; and that you have that Money before us at *Westminster*, in fifteen Days from the Day of the *Holy Trinity*, wheresoever we shall be in *England*, to render to the said *E.* for the Debt, and the said several Damages, Expences, and Costs; and have you there, at the same Time, this Writ. Witness, &c.

A Fieri Facias where Judgment in the Common Pleas was affirmed in the King's Bench, and the Plaintiff in the Action died, and his Administrator revived it by Scire Facias, and had Judgment.

George, &c. to the Sheriff of *Middlesex*. We command you, that of the Goods and Chattels of *W. S.* late of, &c. in your Bailiwick, you cause to be made 28 l. 8 s. 9 d. for a Debt which *T. A.* lately deceased, in his Life-time, before Sir *Robert Eyre* Kt. and his Brethren, our Justices of the Common Bench at *Westminster*, recovered against him; and also 17 l. awarded to the said *T. A.* with his Consent, by our said Court of Common Bench, for his Damages which he sustained by Reason of Detaining that Debt, whereof the said *T. S.* is convicted, as by the Inspection

tion of the Record and Proceedings thereon) (which by Virtue of our Writ for correcting Errors, sued out by the said *W. S.* we caused to be brought into our Court before us, at *Westminster*, with certain Causes of Error) *it appears to us of Record*; as also 9 l. which, in our Court before us at *Westminster*, according to the Form of the Statute in that Case made and provided, were awarded to the said *Thomas* for his Damages, Expences, and Costs which he sustained by Reason of the Delay of the Execution of the said Judgment, by Means of prosecuting our said Writ for correcting Errors, sued out as aforesaid by the said *W. S.* against the said *T. A.* of and upon the Premises; upon which said Writ of Error the Judgment against the said *W. S.* is in all Things affirmed, as likewise appears to us of Record; and thereupon it was considered in our same Court before us at *Westminster*, that *Judith A.* Widow, Relict, and Administratrix of all the Goods and Chattels, Rights and Credits, which were of and belonging to the said *T. A.* at the Time of his Death, may have her Execution against the said *W. S.* for the said Debt, and the said several Damages, Expences and Costs; and have you the said Monies before us at *Westminster*, in three Weeks from the Day of *St. Michael*, wheresoever we shall then be in *England*, to render to the said *Judith* for her said Debt, Damages, Expences, and Costs; and have you there likewise, at the same Time, this Writ. Witness, &c.

A Testatur

A Testatum non omittas Fieri Facias in Debt, after a Judgment affirmed on a Writ of Error in the King's Bench.

George, &c. to the Sheriff of Berks, Greeting. Whereas we lately commanded our Sheriffs of London, that of the Goods and Chattels of *John R.* late of *Windsor* in your County, Cornchandler, in their Bailiwick, they should cause to be made 150 l. 10 s. which *Elizabeth F.* Widow, lately in our Court before Sir *Peter King*, Kt. and his Brethren, our Justices of the Common Bench at *Westminster*, recovered against him for her Damages which she sustained as well by Reason of his not performing his Promise and Undertaking lately made by the said *John* to the said *Elizabeth*, as also for her Expences and Costs laid out by her about her Suit in that Cause, whereof the said *John* was convicted, as by the Inspection of the Record and Proceedings thereupon, (which we lately caused to be brought into our Court before us at *Westminster*, with certain Causes of Error, and which in our same Court before us, is in all Things affirmed) now remaining in our Court before us, it appears to us of Record; and also fourteen Pounds which were awarded to the said *Elizabeth*, in our same Court before us, according to the Form of the Statute in that Case made and provided, for her Damages, Expences and Costs, which she sustained by Reason of the Delay of the Execution of the said Judgment, by Means of Prosecuting our said Writ for correcting Errors, sued out by

the said *John* as aforesaid, of and upon the Premises, wherof the said *John* is convicted, as appears to us likewise of Record, and that they should have those Monies before us, in fifteen Days from the Day of *St. Martin* now last past, wheresoever we should then be in *England*, to render to the said *Elizabeth*, for her said Damages, Expences and Costs; and our said Sheriffs of *London* at that Day returned to us, that the within named *John R.* had no Goods or Chattels in their Bailiwick, wherof the within written Damages, Expences and Costs, or any Part thereof, could be made or levied; whereupon, on the Behalf of the said *Elizabeth*, it is sufficiently testified in our same Court before us, that the said *John R.* hath sufficient Goods and Chattels in your Bailiwick, wherof the said Damages, Expences and Costs may be caused to be made and levied; wherefore we command you, that you do not omit, by Reason of any Liberty within your County, but that you enter therein, and of the Goods and Chattels of the said *John R.* in your Bailiwick, you cause to be made 164*l.* 10*s.* for the said Damages, Expences and Costs; and have you those Monies before us, on the *Octave* of *St. Hillary*, wheresoever we shall then be in *England*, to be render'd to the said *Elizabeth*, for her said Damages, Expences and Costs; and have you also there, at the same Time, this Writ. Witness, &c.

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A Fieri Facias for Restitution on the Reversal of a Judgment on a Writ of Error.

George, &c. to the Sheriff of N. Greeting. Whereas *John A.* lately in our Court (that is to say) in the Term of *St. Michael*, in the fifth Year of our Reign, before *Sir Robert Eyre*, Knight, and his Brethren, our Justices of the Common Bench, at *Westminster*, by our Writ, and by the Judgment of the same Court, recovered against *R. C.* late of, &c. and *M.* his Wife, *A. W.* late of, &c. and *E. W.* late of, &c. 13 l. which in our said Court of Common Bench at *Westminster* were awarded to the said *John*, for his Damages which he had sustained by reason of certain Trespasses committed against the said *John*, by the said *R. M. A.* and *E.* with Force and Arms, against our Peace, at *B.* aforesaid, whereof they are convicted, as by the Inspection of the Record and Proceedings thereof, (which we lately caused to be brought into our Court before us at *Westminster*, with certain Causes for correcting Errors in the same) it appears to us of Record: And whereas we, by Reason of divers Errors in the said Record and Proceedings aforesaid, and also in giving the said Judgment, have reversed and totally annulled the same: It is considered (or adjudged) in our same Court before us at *Westminster* aforesaid, that the said *R. M. A.* and *E.* be restored to all Things which they have parted with by Reason of the said Judgment, and for that the said *John A.* sued out his Execution upon the said Judgment; and they the said *R. M. A.* and *E.* were there-

upon taken in Execution for the same, and detained in Prison until Payment was made to the said *John* of the said 13 *l.* Therefore we command you, that of the Goods and Chattels of the said *John* in your Bailiwick, you cause to be made the said 13 *l.* and have you those Monies before us at *Westminster* (at the Day of the Return) to restore to the said *R. M. A.* and *E.* the said 13 *l.* awarded to them by our said Court as aforesaid, upon the Reversal of the said Judgment; and have you there, at the same Time, this Writ. Witness, &c.

Writs of Scire Facias.

A Scire Facias upon a Judgment in Debt.

George the Second, &c. to the Sheriffs of *London*, Greeting: Whereas lately in our Court before us at *Westminster*, by a Bill without our Writ, and by a Judgment of the same Court against *T. H.* of the *Middle-Temple, London*, Esq; *J. C.* recovered Four hundred and seven Pounds for a Debt; and also seventy Shillings for his Damages which he sustained, as well occasioned by the detaining of his Debt, as for his Expences and Costs laid out by him about prosecuting his Suit in that Behalf, whereof the said *Thomas* is convicted, as appears to us of Record: And now on the Part of the said *John*, we have received Information in our Court before us, that although Judgment be thereof given, nevertheless Execution for the said Debt and Damages still remains to be made to him; wherefore the said *John* hath besought

besought us to provide him proper Relief in this Case: And we, being desirous that what is Right and Just should be done therein, command you, that by honest and lawful Men of your Bailiwick you cause it to be known to the said *T.* that he be before us at *Westminster* on *Monday* next after three Weeks from the Day of *St. Michael*, to shew if he knows of, or has any Thing to say for himself, why the said *John* ought not to have his Execution against him for the said Debt and Damages, according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient to the said *T.* so to do, and further to do and receive that which our said Court before us shall then and there consider of in this Case; and have you there the Names of those by whom you shall so cause it to be known to him, and this Writ. Witness *Robert Lord Raymond*, the twenty-eighth Day of *June*, in the sixth Year of our Reign.

A Scire Facias 'against an Administrator in Case.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting: Whereas *Robert S.* lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court, recovered against *J. H.* fifty Pounds for his Damages which he had sustained, as well by Occasion of the not performing certain Promises and Undertakings made by the said *John* to the said *Robert*, as for his Expences and Costs by him laid out

about prosecuting his Suit in that Behalf, whereof the said *John* is convicted, as appears to us of Record: And now, on the Behalf of the said *Robert*, we have received Information in our Court before us, that although Judgment be given, yet Execution of the said Judgment remains to be made to him; and the said *John* is now dead, Intestate, and Administration of all and singular the Goods and Chattels, Rights and Credits, which were the said *John*'s at the Time of his Death, was committed to one *M. H.* Widow and Relict of the said *J.* after his Decease, in due Form of Law at *Westminster* in your County, as in our Court before us we have received Information from the said *Robert*; whereupon the said *Robert* hath besought us to provide him a proper Remedy in this Particular; and we, being willing that what is Right and Just should be done in this Case, we command you, that by honest and lawful Men of your Bailiwick, you cause it to be known to the said *Mary*, that she be before us at *Westminster*, on *Saturday* next after the *Octave* of the *Holy Trinity*, to shew if she has or knows of any Reason why the said *Robert* ought not to have his Execution against her for his said Damages, Expences and Costs, of the Goods and Chattels which were the said *John*'s, and that are unadministred in the Hands of the said *Mary*, according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient to her so to do, and further to do and receive hereafter whatsoever our Court before us shall consider of in this Case: And have you there, at the same Time, the Names of those by whom

whom you shall so cause it to be known to her; and this Writ. Witness *Robert Lord Raymond*, the twenty-second Day of *May*, in the fifth Year of our Reign.

An Alias Scire Facias to have an Execution in Debt.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *Eliz. J. Widow*, Executrix of the last Will and Testament of *E. J.* her late Husband, deceased, lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court, recovered against *J. T. otherwise called J. T. of, &c.* 400*l.* for a Debt, and 23*s.* for Damages which she had sustained, as well by occasion of detaining the said Debt, as for her Expences and Costs laid out by her about her Suit in that Cause, whereof the said *G.* is convicted, as appears to us of Record; and now, on the Part of the said *Elizabeth*, we have received Information in our Court before us, that altho' Judgment be given, nevertheless Execution remains to be made to her; wherefore the said *Elizabeth* hath besought us to provide her a proper Remedy; and we being willing that whatever is Right and Just should be done to her in this Case, we command you, as we have at another Time commanded you, that by honest and lawful Men of your Bailiwick you cause it to be known to the said *Jane*, that she be before us at *Westminster* on *Wednesday* next after fifteen Days from the Feast-day of *Easter*, to shew

if she knows of, or has any Thing to say for herself, why the said *Elizabeth* ought not to have an Execution against her for her said Debt and Damages, according to the Force, Form, and Effect of the said Recovery; and further to ratify and approve of those Things that our Court before us shall then and there consider of in this Case; and have you there, at the same Time, the Names of those by whom you shall so cause it to be known to her; and this Writ. Witness *Robert Lord Raymond*, the twelfth Day of *February*, in the fifth Year of our Reign.

A Scire Facias against one of the Bail in an Action of Debt.

George, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *J. A.* Gentleman, lately in our Court before us at *Westminster*, by a Bill without our Writ, and by the Judgment of the same Court, recovered against *J. C.* Esq; otherwise called, &c. as in the Bond, eight hundred Pounds for a Debt, and also fifty-three Shillings for his Damages which he had sustained, as well by Occasion of the detaining his said Debt, as for his Expences and Costs laid out by him about the Prosecution of that Suit, whereof the said *J.* is convicted, as appears to us of Record; and altho' Judgment be given thereof, nevertheless Execution of the said Debt and Damages remains to be made to him: And whereas *G. W.* of the *Poultry*, *London*, Gent. heretofore, that is to say, in the Term of *St. Michael*, in the third Year of our Reign,

Reign, personally came before us at *Westminster*, and became a Manucaptor and Pledge for the said *J.* that if it happened that the said *J.* should be convicted at the Suit of the said *James* in the said Action, then he, the said Manucaptor, granted that as well the said Debt, as all such Damages, Expences, and Costs, which should be awarded to the said *James* in that Suit, should be made of his Lands and Chattels, and levied to the Use of the said *James*, if it should happen the said *John* should not pay to the said *James* the said Debt, Damages, Expences and Costs, or should not render his Body to the Marshal of our Prison of the *Marshalsea* before us; which said Debt and Damages, Expences and Costs, are not paid to the said *James*, nor hath the said *John* rendred himself to our Prison of the Marshal of the *Marshalsea* before us, as we have received Information from the said *James*, in our said Court before us: Wherefore the said *James* hath besought us to provide him a proper Remedy in this Particular; and we being willing that what is Right and Just should be done to him in this Case, we command you, that by honest and lawful Men of your Bailiwick, ye cause it to be known to the said *George*, that he be before us at *Westminster* on *Wednesday* next after three Weeks from the Day of *St. Michael*, to shew if he has or knows of any Thing to say for himself, why the said *James* ought not to have his Execution against him for his said Debt and Damages, according to the Force, Form, and Effect of the said Recognizance, if it shall seem expedient to him so to do; and further to ratify and approve

prove of what our said Court before us shall consider of in this Case; and have you there, at the same Time, the Names, &c.

Proceedings in Ejectment.

A Lease in Ejectment, where the Premises are not inhabited, in order to recover the Possession.

This Indenture, made the Three and twentieth Day of May, in the fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. Anno Domini 1680. Between *John Andrews* of the Strand, Victualler, of the one Part, and *John Lilly*, Gent. of the other Part, witnesseth, That he, the said *John Andrews*, for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to farm letten, and by these Premises doth demise, grant, and to farm let unto the said *John Lilly*, all that his Messuage, commonly called or known by the Name of the *Tallow Chandler's Head*, situate, lying, and being in *Bloomsbury Market-Place*, in the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, and late in the Possession of one *Henry Duncomb*, to have and to hold the said Premises, with the Appurtenances, from the Date of these Presents, for and until the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; provided always, and upon Condition, that if

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the said *John Andrews*, his Executors or Administrators, shall at any Time after the 30th Day of this present *May*, tender to the said *John Lilly*, his Executors or Administrators, one Shilling, then this present Indenture, and every Thing therein contained, shall be Void and of none Effect, (any Thing herein contained to the contrary in any wise notwithstanding.) In Witness whereof the Parties aforesaid have hereto interchangeably set their Hands, &c.

A Declaration in Ejectment by Bill.

A. B. complains of *C. D.* being in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself, for that whereas *E. T.* Gentleman, on the tenth Day of *May*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of *Great Britain*, &c. at *Westminster*, in the County of *Middlesex*, had demised, granted, and to farm let to the said *A.* five Messuages, (*reciting the rest of the Parcels*) with the Appurtenances, situate, lying, and being in the Parish of *St. Martins in the Fields*, in the said County of *Middlesex*; To have and to hold the said Tenements, with the Appurtenances, to the said *A. B.* and his Assigns, from the 25th Day of *March* then last past, to the full End and Term of five Years from thence next Ensuing, and fully to be compleat and ended; by Virtue of which said Demise, he the said *A.* entred into the said Tenements, with the Appurtenances, and was thereof possessed until the said

said C. afterwards (that is to say) on the same tenth Day of *May*, in the sixth Year afore-said, entered with Force and Arms into the said Tenements, with the Appurtenances, in and upon the Possession of the said *A.* and ejected, drove out, and removed the said *A.* from his said Farm, during his said Term not yet expired; (and the said *A.* being so ejected, drove out and removed) the said *C.* hitherto hath with-held from him, and still doth withhold the Possession thereof, and then and there brought other Injuries upon him, against the Peace of our said Sovereign Lord the King, and to the Damage of the said *A.* twenty Pounds: And thereupon he brings his Suit, &c.

A Declaration in Ejectment by Original.

Michaelmas the Sixth of King *George* the Second.

Somersetshire. *A. B.* late of *Taunton* in the said County, Yeoman, was attached to answer to *E. F.* of a Plea, wherefore with Force and Arms, &c. he entered into a Messuage, a Barn, and a Stable, with the Appurtenances, in *G.* which *H. J.* Gentleman, demised to the said *E.* for a Term which is not yet expired, and ejected him from his said Farm, and did other Wrongs to him, to the great Damage of the said *E.* and against the Peace of our Sovereign Lord the King; and whereupon the said *E.* by *Henry Cruwys* his Attorney, complains, that whereas the said *H. J.* on the first Day of *May*, in the fifth Year of the Reign of His present Majesty

Majesty, at *Taunton* aforesaid, hath demised to the said *E.* the said Tenements, with the Appurtenances, for him the said *E.* and his Assigns, to have and to hold the said Tenements, with the Appurtenances, from the first Day of *March* then last past, to the full End and Term of five Years then next following, and fully to be compleat and ended: By Virtue of which said Demise the said *E.* entred into the said Tenements, with the Appurtenances, and was possessed thereof, and being so possessed thereof, the said *A.* afterwards (that is to say) on the same first Day of *May*, in the said fifth Year, with Force and Arms (that is to say) with Swords, Staves, and Knives, entered into the said Tenements, with the Appurtenances, which the said *H. J.* demised to the said *E.* in the Manner as aforesaid, for a Term which is not yet expired, and ejected the said *E.* out of his said Farm, and did him other Wrongs, to the great Damage of the said *E.* and against the Peace of our said Sovereign Lord the King; whereby the said *E.* declares he is injured and endamaged to the Value of 20 *l.* And therefore he brings his Suit, &c.

The Notice.

To Sir *William Buck*, Baronet.

I am informed that you are in Possession; or claim a Title to the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and *J.* being sued in this Action as a casual Ejector, and having no Claim or Title to the same, Do advise you to appear on

on the first Day of next *Hillary Term*, in His Majesty's Court of *King's Bench* at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my stead; otherwise I shall suffer a Judgment to be entred against me, and you will be turned out of Possession.

Your Loving Friend,

A. B.

The Common Rule in Ejectment.

Michaelmas Term in the sixth Year of the Reign of King *George* the Second.

Surry, ff. It is ordered, with the Consent of the Attornies for both Parties, that *C. D.* be admitted Defendant instead of the now Defendant *A. B.* and that he forthwith appear at the Suit of the Plaintiff, and put in common Bail, and receive a Declaration in a Plea of Trespass and Ejectment for the Tenements in question, and forthwith plead thereunto Not guilty; and that upon the Trial of the Issue, he confess Lease, Entry, and actual Ouster, and insist upon the Title only, otherwise Judgment shall be entred by the Plaintiff against the now Defendant *T.* by Default; and if upon the Trial of the said Issue the said *C. D.* shall not confess Lease, Entry, and actual Ouster, by which the Plaintiff will not be able further to prosecute his Bill against the said *C.* then no Costs or Charges shall be awarded upon such Nonsuit, but the said *C.* shall

shall pay to the Plaintiff the Costs and Charges thereupon to be taxed: And it is further ordered, that if upon the Trial of the said Issue, a Verdict should be given for the Defendant, or if it should happen the Plaintiff should not further prosecute his said Bill for any other Cause, than for not confessing the said Lease, Entry, and actual Ouster, that then the Plaintiff's Lessor shall pay to the said C. his Costs and Charges in that Case to be awarded to him, &c.

Judgment in Ejectment for the Plaintiff after a Verdict.

Therefore it is considered, (or adjudged) that the said Charles do recover against the said W. his Term yet to come of and in the said Tenements, with the Appurtenances, and the said Damages assessed by the said Jury in Form aforesaid; and also eight Pounds and ten Shillings for his Expences and Costs awarded to the said Charles, with his Assent, by his present Majesty's Court here, by way of Increase; which said Damages, in the Whole, amount to ten Pounds, ten Shillings and Sixpence; and be the said W. amerced, &c.

Jones and Tully.

Judgment by Default on a Scire Facias in Ejectment on a double Demise.

But made Default; therefore it is considered, that the said John Jones have his Possession

tion of the said Term yet to come of and in the several Tenements aforesaid, with their Appurtenances, and also his Execution against the said *A.* for his Damages, according to the Force, Form, and Effect of the said Recovery, by the Default of the said *Arthur*, &c.

Judgment in Ejectment by Default by Nil dicit upon an Original.

And the said (Defendant) by *A. B.* his Attorney, comes and defends the Force and Injury, &c. and hereupon the said (Plaintiff) prays that the said (Defendant) may answer to the said Declaration; and the said (Defendant) says nothing thereto in Bar, or to stop the said Plaintiff's Action, but makes Default; whereby the said Plaintiff remains against the said (Defendant) undefended; wherefore it is considered, that the said (Plaintiff) do recover against the said (Defendant) the Possession of the said Term yet to come of and in the said Tenements, with their Appurtenances, and his Damages occasioned by the Trespas and Ejectment aforesaid: But because it is unknown what Damages the (Plaintiff) hath sustained by Reason of the Trespas and Ejectment aforesaid, the Sheriff is commanded, that by the Oath of twelve honest and lawful Men of his Bailiwick, he diligently inquire what Damages the said (Plaintiff) hath sustained, as well by Reason of the said Trespas and Ejectment, as for his Costs and Expences laid out by him about his Suit in that Be-

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half: And that he cause the Inquisition which he shall take, &c. to be made apparent to our Sovereign Lord the King at *Westminster*, in three Weeks from the Day of *St. Michael*, under the Seal, &c. and the Seals, &c. The same Day is given to the said (Plaintiff;) and thereupon the said (Plaintiff) prays his Majesty's Writ of Possession, &c. as hereafter.

Judgment in Ejectment by Original, where the Attorney says he is not instructed to make any Defence, which is what was called Non sum Informatus.

And the said *C.* by *B. T.* his Attorney comes and defends the Force and Injury, and Damages, and whatever else he ought to defend, where and when the Court will please to consider thereof; and hereupon the said *A.* prays that the said *C.* may make answer to his said Declaration, upon which the said *E.* says, that he is not instructed by his Client (the said *C.*) to give any Answer to the above Complaint of the said *A.* nor says he any Thing in Bar or Hindrance of the said Action of the said *A.* whereby the said *A.* remains against the said *C.* undefended therein; for which Reason it is considered that the said *A.* do recover against the said *C.* his Possession of the said Term yet to come of and in the said Tenements, with the Appurtenances, and his Damages occasioned by the said Trespass and Ejectment; but because it is unknown what Damages the said *A.* hath sustained by reason of the said Trespass and Ejectment, the Sheriff

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riff is commanded that he diligently inquire by the Oaths of twelve honest and lawful Men of his Bailiwick, what Damages the said *A.* hath sustained as well by Reason of the said Trespas and Ejectment, as for his Expences and Costs laid out by him about his Suit in that Behalf; and that the Sheriff cause the Inquisition, which he shall take thereon, to be before our Sovereign Lord the King (if by Original) from the Day of St. Michael in three Weeks, wherever he shall then be in England; (if by Bill) on Monday next after three Weeks of St. Michael, under his Seal and the Seals of those by whose Oaths he shall take such Inquisition. The same Day is given to the said *A.* to be here before our Sovereign Lord the King; and thereupon the said *A.* prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term of and in the said Tenements, with the Appurtenances, yet to come; and it is granted to him, returnable here at the Time aforesaid, &c.

A Judgment for that the Defendant's Attorney says he is not instructed to make any Defence, which is what was usually called Non sum Informatus, with a Remittitur Damna.

And the said Matthew Dimock, by John Lilly his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, where and when the Court

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Court will consider thereof; and hereupon the said *James Hicks* prays that the said *Matthew* may make Answer to his said Déclaration; upon which the said Attorney for the said *Matthew* saith, he is not instructed by the said *Matthew*, his Client, to give any Answer to the said Complaint of the said *James*, nor says any Thing in Bar or Hindrance of the said Action of the said *James*, whereby the said *James* remains against the said *Matthew* undetended therein: Therefore it is considered, that the said *James* do recover his said Term of and in the said Tenements, with the Appurtenances, against the said *Matthew*, and his Damages occasioned by the said Trespass and Ejectment, to be awarded to him, &c. and the said *James* of his own accord remits and releases to the said *Matthew* all such Damages so awarded to him; therefore the said *Matthew* is acquitted of all such Damages, and the said *James* prays a Writ of our said Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause him to have the Possession of his said Term (yet unexpired) of and in the said Tenements, with the Appurtenances; and it is granted to him returnable before our said Sovereign Lord the King (if by Bill) on Monday next after three Weeks of St. Michael; if by Original) in three Weeks from the Day of St. Michael, where-ever he shall then be in *England*. The same Day is given to the said *James* to be there, &c.

A Writ

*A Writ of Habere Facias Possessionem ; or
a Writ to cause the Plaintiff to have his
Possession of the Tenements in Question.*

George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. to the Sheriff of Oxford, Greeting. Whereas *Richard J.* lately in our Court before us at *Westminster*, by our Writ (if by Original); (if by Bill) then by a Bill without our Writ, and by the Judgment of the same Court, recovered against *T. B.* late of *London*, his Term (yet unexpired) of and in six Messuages, Two hundred Acres of Land, forty Acres of Meadow, One hundred Acres of Pasture, and Two hundred Acres of Wood-Land, with the Appurtenances, in S. and in the Parish of *Stanton Harcourt*, in your County; and also of and in the Rectory of *Stanton Harcourt*, with the Appurtenances, in your County, which one *W. M.* on the seventh Day of *April*, in the second Year of our Reign, demised to the said *Richard* for a Term of Years which is not yet expired, (that is to say) from the first Day of the same Month of *April*, to the full End and Term of ten Years then next following, and fully to be compleat and ended; by Virtue of which said Demise the said *Richard* entered into the said Rectory and Tenements, with the Appurtenances, and was thereof possessed until the said *Thomas* afterwards, (that is to say) on the same seventh Day of *April*, in the said second Year of our Reign, with Force and Arms entered into the said

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said Rectory and Tenements, with the Appurtenances, in and upon the Possession of the said *Richard*, thereof, and ejected, drove out, and removed the said *Richard* from his said Farm for the said Term then and yet unexpired, and still doth with-hold the Possession of the same from the said *Richard*, whereof the said *Thomas* is convicted, as appears to us of Record; and forasmuch as it is adjudg'd in our same Court before us, that the said *Richard* have an Execution upon his said Judgment against the said *Thomas*, according to the Force, Form, and Effect of his said Recovery; therefore we command you, that without Delay you cause the said *Richard* to have his Possession of his said Term (yet unexpired) of and in the said Tenements, with the Appurtenances, and in what Manner you shall execute this Precept, do you make appear to us, in three Weeks from the Day of St. Martin, wherever we shall then be in *England*, sending back to us this our Writ. Witness *Robert Lord Raymond*, the twenty-third Day of October, in the sixth Year of our Reign.

A Declaration for the Mesne Profits in an Ejectment tried Mich. 11 K. W.

Worcester, ss. John Durham, late of *Wiltshire* in the County of *Gloucester*, Yeoman, was attached to answer to *John Underhill*, of a Plea, wherefore with Force and Arms he broke and entered into three Messuages, Five hundred Acres of Land, Two hundred Acres of Meadow, and Two hundred

hundred Acres of Pasture, with the Appurtenances, in Treddington in the County of Worcester, and drove out and removed the said John Underbill from the Possession and Occupation of his said Tenements, and for a long Time with-held the said John Underbill from the Possession and Occupation of the same, (he being so driven out and removed therefrom as above) and the said John Durham, during all the Time aforesaid, had and received to his own proper Use, all the Issues and Profits of the said Tenements of the yearly Value of Two hundred Pounds, and brought other Injuries upon the said John Underbill, to the great Damage of the said John Underbill, and against the Peace of our Sovereign Lord the King, his Crown and Dignity; and whereupon the said John Underbill, by Giles Taylor, his Attorney, complains that the said John Durham, on the first Day of June, in the fifth Year of the Reign of his said present Majesty, with Force and Arms broke and entred into the said three Messuages, Five hundred Acres of Land, Two hundred Acres of Meadow, and Two hundred Acres of Pasture, with the Appurtenances, in Treddington in the said County of Worcester, and drove out and removed the said John Underbill from the Possession and Occupation of his said Tenements, and for a long Time (that is to say) from the said first Day of June, in the fifth Year aforesaid, until the Day of the suing out of the Original Writ of the said John Underbill, with-held the Possession and Occupation of the said Tenements from the said John Underbill (he being so driven out and removed as above) and also the said

John Durham had and received to his own Use all the Issues and Profits of the said Tenements of the yearly Value of Two hundred Pounds, during all the Time aforesaid, and brought other Injuries upon the said *John Underhill*, to his great Damage, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity; wherefore he says he is injured and endamaged to the Value of 50*l*. And therefore he brings this Suir, &c.

A Short Historical, as well as Practical, Account of this Action of Trespass and Ejectment.

An *Ejectment* is an *Action* for the Lessee for Years, to recover a *Term* when he is ousted; and this is now generally made use of to recover the Possession of Lands; and I hope I shall be here excused, if I give a small *Historical Account* of this *Action*, which I choose to do, not because I would swell this Treatise, which is intended to be confined within narrow Limits, and yet to contain as much useful Matter as possible; but because this *Action*, tho' oftener made use of than some others, is not generally so well understood as some Things are, that have more Intricacy contained in them; but I apprehend the Reason of that is, because it is a *Fiction* in Law,

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and therefore People are not so well acquainted with its Foundation and Institution, and the Reason thereof, as with other Matters that relate to *real Parties*.

By the ancient Common Law, Lands and Tenements were never recovered in any *personal Action*, but anciently the Writs of *Entry* and *Assize* were the usual Means for the Recovery of the *Possession*, and these lay only against the *Freeholder*, because the Estate for Years was heretofore only a precarious Possession; and therefore to have Actions against such Persons was to no Purpose, because such *Terms* were generally defeated or determined, before any intricate Title could be decided; besides, these Possessions being so precarious, the *Possessors* were not trusted with the Defence of the Interest of the Land; and if they were ousted, they could only have recovered Damages for the Loss of their *Possessions*, and if ousted by their *Lessors*, they could seek only a Remedy from their *Covenants*.

Thus the Law continued till the 14 H. 7. and then it began to be resolved that an *Habere Facias Possessionem* would lie to recover the *Term* itself.

It seems that these long Terms about this Time had their Beginning, and that since

since such *Lessees* could not by Law recover the Land itself, therefore they used to go into *Equity* against the *Lessor* for a *specifick Performance*; and against Strangers, to have *perpetual Injunctions* to quiet their Possessions. This Drawing the Business into the Courts of *Equity*, obliged the Courts of *Law* to come to a Resolution, that they should recover the Land itself in an *Habere Facias Possessionem*.

But this Resolution brought on a new Method of *Trial* unknown before to the *Common Law*, for then it became usual for a Man that had a Right of *Entry* into any Lands to seal *Leases of Ejectment* on the Lands, and then any Person that next entered on the Freehold was an *Ejector*; and the Conveniency that arose from this Method was, they could try the Title *toties quoties*; whereas, if the Plaintiff was barred in an *Affize*, he was put to his *Writ of Right*; but this was a Means of turning any Man out of Possession, because such Plaintiff would recover his Term without any Notice to the *Tenant in Possession*; and therefore the Courts of Justice would not suffer that they should lose their Possessions without any Opportunity to defend them; wherefore the Court made it a standing

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Rule,

Rule, that no Plaintiff should proceed in *Ejectment* to recover his Lands against such a *casual and titular Ejector*, without delivering to the Tenant in Possession a Declaration, and making him an Ejector and proper Defendant, if he pleased.

N. B. 489.

This was a proper Rule of Court, and in its Power to form; for otherwise the Court would be made instrumental in doing an Injury to a third Person, because a Declaration might otherwise be delivered to a Stranger, a feint Defence be made, and a Verdict, Judgment, and Execution obtained without the Tenant's having any Notice of it: But it is not to be doubted, but that such Actions were brought at first against the real Ejectors that resided in the Possession: But because any Person that came into the Land *Animo possidendi*, was equally an Ejector with him that resided, the Action in Strictness of Law might be brought against him, but because this (as hath been said) turned to the Injury of the residing Possessor, the Rule was made, that he should have Notice of it; and therefore they would not give Judgment in *Ejectment*, unless an Affidavit was made, that the Tenant in Possession was served with a Copy of the Declaration. But the antient Practice was, that such Leases were

were actually to be sealed and delivered, because otherwise the Plaintiff could maintain no Title to the Term, and were also obliged to be sealed on the Land it self, because it was Maintenance to convey out of Possession; and therefore in Relation to the Quickness of the Remedy, the *Affize* had the Advantage, because none of this Preparation was required beforehand; for the Writ of *Affize* came down to the Assizes, and the *Jury* was there warned, the *Cause* tried, and the *Judgment* given; yet the Method in *Ejection* from the Conveniency of the repeated Trials, notwithstanding the previous Preparations, was generally preferred.

Thus it stood till the Time of the Lord Chief Justice *Rolle*, and he invented the Rule now in Use; which is, that if the Defendant comes into the Room of the casual *Ejector*, he should enter into a Rule to confess *Lease*, *Entry* and *Ouster*, and should stand upon the *Title* only. This Rule was reasonable, because, when the Plaintiff had made his *Lease* upon the *Land*, any third Person that came upon the Land *animo possidendi*, in Strictness of Law, was an *Ejector*; therefore when any other *Ejector* was placed in his Stead, it was very reasonable in the Court to im-

pose Terms upon him, and therefore the proper Terms were, that he should not stand on the Proof of an *Actual Entry*, *Demise*, and *Actual Ouster*, because this was no more than a Form of bringing the Title in Question; it was not fit that the Plaintiff should be nonsuited for want of Proving the formal Demise set forth in the Declaration, when the casual Ejector would have let the Judgment go by Default.

I beg Leave to mention somewhat of the Writ or Process in this Action: Every Ejectment did antiently begin with a *Pone*, as in Trespass, the Ejectment indeed being but a Species of Trespass; for the Ousting of any Person of his Term, comes properly under that Denomination, and therefore the Original was a *Pone* in this Form:

Rex Vic. salutem. Si A. B. fecerit te secutum de clamore suo prosequendo, tunc pone per vados & salvos plegios C. D. nuper de L. Gen. ita quod sit coram Just' nostris apud Westm' (tali die) ostensurus quare Vi & Armis Manerium de B. quod præfat' T. dimisit A. ad terminum qui nondum præterit intravit, & ipsum a firma sua prædict' ejecit, & alia enormia ei intulit, ad grave damnum, &c.

The Old Writ runs thus:

Intravit

Intravit & Bona & Catalla ejusdem A. ad Valentiam 103. in eodem Manerio inventa cepit & asportavit ipsumq; a firma, &c.

New N.
Brev. M.
509.

The Form of this Writ seems to have been taken from the *Affize*, which says, *Facias tenementum illud reseisiri de catalis quæ in ipso capta fuerint, & ipsum tenementum cum catallis esse in pace usq; ad prim' assisam, &c.* And the Reason why the Writs upon such Disseisins and Ousters ran for Goods and Chattels as well as the Lands, was, because antiently such Disseisins were made by Violence; the Disseisors not only taking away the Lands, but generally also the Stock that were upon them, and for removing such forcible Intrusions of one Lord upon another, by the Power of the King was the *Affize* invented, and after the Model of that was the Ejectment framed.

Reg.
Brev.
196.

Upon the old Writ the Register has this Remark, that it can't be *de bonis & catallis asportatis*, because of such Goods a Man shall have an Exigent, and in a Writ of Ejectment Distress infinite.

But Judge *Brown* observes, that this Rule was ill taken: For true it is (says he) that in *Ejectment* Process of Outlawry lies as well as *Distress infinite*; and so is *Fitz-Herbert*: But however the Writ

*Vid. Fitz.
New Na-
tura Bre-
vium, 506.
Letter A.*

is good either with or without these Words, and the Reason is, because a Man shall accommodate his Writ to the Nature of his Case; and the Precedents had appeared both Ways, according as the Ouster had been with the Taking away of Chattels or not; but the *Affize* has always the Clause *de Catallis*, because they recovered Damages in the *Affize* for the *Mesne Profits*, which was one of the Points complained of in that Writ, and the old Form has always been kept inviolable in that Action: But an *Ejectment* is not a proper Action for the *Mesne Profits*, though it may comprehend the Chattels that were taken in the very Ouster, because it was never laid with a *Continuando*, as in an Action of Trespass for the Recovery of *Mesne Profits*, and therefore could not comprehend the *Mesne Profits* that were taken during the whole Ouster, since every Act is a new Trespass; but the *Affize* punishes the whole Disseisin, by giving commensurate Damages from the first Act till the Time of the Action brought as one intire Disseisin.

And here I shall consider only the Process, not having room in this little Treatise to insert all I would say on this Title *Ejectment*; and the Form of the Writ, according to Modern Proceedings, is only
confi-

considerable in a Writ of Error. The Writ itself, like all other Writs of Trespass, is an Attachment, and the Forms of Attachments run in the same Words, *Pone per vadios & salvos plegios, &c.* Whereas, in other personal Actions, they began with the Writ in nature of a Summons, commanding the Party to restore the Thing in Demand, before they came to an Attachment. The Reason of the Difference is this, because in this Writ, and in all other Cases of Trespass, the Party complains of a Breach of the Peace, whereon there is a Fine to the King; therefore they give the Party no Warning, lest he should withdraw himself; but in Debt, since the Plaintiff has trusted the Defendant originally, 'tis but reasonable he should give him Credit so much longer, till he is summoned to appear.

Besides, in Trespass there was a *Capias* on the Person, because of the King's Fine, which was generally used as the second Process, and therefore the first was upon his Goods; whereas, in other personal Actions, the whole Process at Common Law was on the Goods only.

Upon this Attachment the Sheriff returned Pledges *de prosequendo* in Behalf of the Plaintiff, and Pledges for Appearance in Behalf of the Defendant; and these

were twofold, either proper Persons who undertook his Appearance, or else attached his Goods, which were forfeited on his Non-appearance. In the former Case, Pledges for the Plaintiff were taken by these Words in the Writ, *Si A. fecerit te securum de Clamore suo prosequendo*; in the later Pledges for the Defendant, were by these Words in the Writ, *Pone B. per vad' & Salv' Pleg'*, and so it was in an Assize, where are the same Words in the Writ. Upon which see the Sheriff's Return in the *Commentaries*.

F. N. B.

200.

New N.

Brev. 506.

The second Step in this Action was either by *Capias* or Distress infinite; the Distress was the Process of the Party, and the *Capias* was the Process of the King; for in all personal Actions they proceeded by *Summons*, *Attachment*, and *Distress infinite*: In all Criminal Prosecutions, and in all Prosecutions for Fines for the King, they proceeded by *Capias*: But in Trespas, where the King required his Fine for the Plaintiff's Prosecution, the Plaintiff took hold of the King's Process to oblige the Party to appear.

F. N. B.

92 Brit.

cap. 26.

f. 52. 82.

H. 3 c. 7.

9, & 12.

Ca. 2 Inst.

254

If the Party was *attached* by Goods or Pledges, and did not appear, the *Distingas* issued out upon all his Goods and Lands to compel him to appear, which was called the *Grand Distress*, or *Distress infinite*; but

but if the Sheriff returned *Nil* upon the *Pone*, then they proceeded to *Capias* and *Outlawry*; and the reason was, because it appeared by the Sheriff's Return, that the Defendant had nothing whereby he could be compelled to appear, and the Defendant had a Remedy, if the Sheriff did not actually serve the *Attachment*, because the Trial of Service of such *Attachments* was by Examination of the Sheriff's Officers, and the Plea of not being attached by fifteen *Jurors* was always tried by their Examination, and therefore there was no false Return against the Officer for returning a *Nil*; and the rather because the Party was little, if at all, prejudic'd, since he was discharged from the Arrest by making a proper Appearance. Hence it came to pass, that the *Capias* at length issued as the first Process without any *Nihil* returned on the *Pone*; and so when the *Capias* was given in Account by the Statute of *Marlebridge*, which was given to the Lords when their Bailiffs had nothing to answer, they first returned *Nil* on the *Summons*, and then the *Capias* issued; but for the former Reason the *Capias* afterwards issued in *Account* as the first Process, and so in Debt, which was in the Similitude of *Account* by that Statute.

If in Ejectment it be said that the Defendant

Br. Attachment, c. 12, 17, 18.
9 Co. 31.

Booth 9.

2 Inf 143, 144.

fendant was summoned to answer, and not attached, the Declaration is ill upon a Demurrer; but after a Verdict and Writ of Error brought, if no Original be found, whereby it appears there was a vicious Proceeding by Summons, it's aided by the Statute of *Jeofails* of the 18 *Eliz.* c. 14. which makes the Proceedings good after Verdict, tho' the Original be wanting: And tho' if there had been a vicious Original upon the File, it had been Error; yet, while there is no Original upon the File, it is helped by that Statute, and they will intend that there was a good Original, which is lost, and that the Clerk had mis-recited such good Original.

I come now to the Modern Process in this Action; and now, it is not usual to make out a *Capias* against the *Possessor* upon an *Ejectment* delivered, as it was of old, when Men were ousted of Terms for Years, but they deliver a Declaration to the Tenant in Possession in the Name of the *casual Ejector* in this Manner, with a Notice in the *casual Ejector's* Name.

J. D. you may perceive by this Declaration, that I am sued as *casual Ejector* for the Lands and Tenements within specified, in your Possession; (whereunto I claim no Title) I do therefore hereby give you timely Notice, that unless you appear
and

and defend your Title this next Term, I will suffer Judgment to pass against me by Default; whereby you will be turned out of Possession. Your loving Friend *A.*
B. 29 Decemb. 1710.

The Service of this Declaration, before the late Act of Parliament, must have been made either to the Tenant himself, or to his Wife, and not to any of his Children or Servants; and the Reason was, because the Tenant, by having explain'd to him what was the Meaning of the Declaration, had sufficient Warning to defend himself; and this the Court did not think reasonable should come at second hand to the Tenant, unless from the Wife, who is presumed to be equally concerned in Point of Interest; and in that it differs from a *Summons*, which might be either delivered to the Tenant, or upon the Land, by the Sheriff's coming upon the Land, and summoning the Party to appear by setting up a white Wand, which antiently was a Mark that the Land was claimed by others.

After this Declaration delivered, the Plaintiff's Attorney was obliged to make Oath that he delivered to *J. D.* Tenant in Possession of the Premises in Question a true Copy of the annexed Declaration, with the beforementioned Indorsement or Supercription thereon, which said Indorsement,

*V. the Act
of 4 K G. 2.*

dorsement, &c. the Deponent did then read to the said J. D. and acquainted him with the Contents thereof.

Lilly P. R.
499.

This Affidavit was to be positive, that J. D. was Tenant in Possession, or that the Defendant acknowledged himself to be so, because no Man should be turned out of Possession without a positive Affidavit, on which he might charge the Defendant with Perjury.

Upon this Affidavit they moved for Judgment against the casual Ejector, which was granted, unless the Defendant in due Time entered into the Common Rule; and the Declaration against the casual Ejector ought to be delivered before the Effoin-Day of the Issuable Term, when the Cause is design'd to be tried; and it hath been adjudged, that there ought to be a *Latitat* sued out against the casual Ejector, and Common Bail filed; otherwise the Judgment may be set aside on Motion. 2 Show. 249. Boucher and Friend.

The Rule in the *Common Pleas* may be seen among the Proceedings in the *Common Pleas*; and the Rule in the *King's Bench* is as herein beforementioned.

These Rules being made by Assent of Parties, an Attachment lies for Non-performance of them, as for all other Rules of Court that are disobeyed; and this is all

all the Remedy which the Parties on both Sides have for their Costs, that *J. H.* who claims Title, &c. and if there be several Persons that claim Title, the Rule may be drawn generally or particularly; generally that *J. H.* who claims Title to the Premises in Question in his Possession, should be admitted Defendant for such Messuages; and this puts a Necessity on the Plaintiff at the Assizes to distinguish by Proof what Tenements are in each Defendant's Possession, because by the Rule he is to confess Lease, Entry, and Ouster, only for the Lands in his Possession; and if the Plaintiff cannot distinguish by Proof what Tenements are in each Defendant's Possession, he can have no Verdict against him, and consequently no Judgment.

Or the Rule may be drawn specially, ^{Lilly P. R.} that *J. H.* who claims Title to such Lands, ^{497.} expressing them particularly, should be admitted Defendant, and that supercedes the Necessity of Proof that the Lands are in his Possession; and if the Defendant's Attorney will not give a Note of the Particulars of the Land for which he was admitted Defendant, the Plaintiff may summon him before a Judge, who will order the Rule thus specially to be drawn up, in case the Party in Possession will admit

Lilly's P.
R. 499.

admit himself to be Defendant; but because the Defendant's Attorney is to draw up the Rule, it being entred into by his Consent, it is often drawn up in general Terms, which puts the Plaintiff to his Proof at the Assizes; for tho' the Rule for Judgment against the casual Ejector be drawn up by the Plaintiff, yet that is only for Judgment against such Ejector, in case the Tenant in Possession does not enter into the common Rule by a limited Time, which puts it upon the Defendant to draw up the common Rule, who is to draw it up, and leave it at the Judge's Chamber, and give Notice of it to the Plaintiff's Attorney.

Lilly's P.
R. 499.

No Person is admitted to defend in Ejectment, unless he be Tenant in Possession, or hath been in Possession, or receives the Rent; because it is an Act of Chimperty for any Person to interpose, to cover the Possession with his Title; and if the Party would make any Person Defendant with another who was not concerned in the Possession of the Tenements, this was a Mischief in Common Law, because recovering against one of the Defendants, there was consequently no Remedy for the Stranger for his Costs, but that is remedied by 8 and 9 Will. 3. c. 10. whereby Costs are given to such Stranger who is made

Lilly's P.
R. 500.

made Defendant, unless the Judge certifies immediately on the Trial, that the Plaintiff had a probable Cause for making such Stranger Defendant.

The Rule in the *Common Pleas* is, that he shall forthwith appear, and receive a Declaration; and this supercedes the Necessity of an original Writ, because the Tenant is to appear, and receive a Declaration, and therefore cannot take any Advantage for Want of an Original, unless in a Writ of *Error*; but when a Writ of *Error* is brought, they must file an Original, unless it be after a Verdict, when it is helped by the Statute.

As in the *Common Pleas* there is no need of an Original; so in the *King's Bench* there is no need of a Latitat, or Bill of Ejectment, but the Party must file a Bill of Ejectment, besides the Plea-Roll, in case a Writ of Error be brought before the Errors are assigned, tho' he must file a Bail before he can proceed; the Reason of which is, that the Court has no Authority to proceed in Ejectments by Bill, unless the Defendant be in Custody; therefore Bail by the Rule is ordered to be filed, that the Court may have an Authority to proceed; but they don't file a Bill in the Office against such a Person as a Prisoner of the Court, suggesting he is delivered

vered to Bail, because he is bound by the Rule to receive a Declaration; and so they need only make up the Plea-Roll, until a Writ of Error be brought, and then they must file their Bill of Ejectment, because in the Writ of Error no Notice is taken of the Rule; and therefore a Bill must be filed against the Person, as the Prisoner of the Court, that a proper Person privileged may appear to the superior Jurisdiction, and a proper Suit commenced against him.

But in the *King's Bench* they may proceed by Original, as well as by Bill, because in like Manner as they may proceed against any Person privileged or bailed by the Court; so also they may have an Original in this Court, because it is an Action of Trespass, which is originally cognizable in this Court, it being a criminal Cause, for which there is a Fine due to the King, and then there is a Declaration delivered as in the *Common Pleas*, that the Defendant was attached to answer, &c.

And there is this Benefit in Proceeding by Original in the *King's Bench*, that there is no Writ of Error but in Parliament, and therefore the Writ of Error can't be allowed but in the Intervals of Parliament; and the Reason is, because no Writ of Error
lay

lay out of the Court in which the King was supposed to reside in Person, but the Legislature and the King were supposed to reside in the Court where criminal Offences were punished, because it was Part of that high Office to preserve the publick Peace by Animadversions on such Offenders; and when the Court of *King's Bench* had acquired a Jurisdiction in civil Causes by Way of Privilege relating to the Prisoners of their own Court, it became necessary, that Subjects should not be disappointed of their Writ of Error, either by the not Sitting of Parliament, or by their being employed in publick Business when they did sit; and therefore the Statute of the 27 *Elix. c. 8.* gave a Writ of Error in the *Exchequer-Chamber* in civil Actions, among which are Ejectments; but it excepts the Case where the King is Party, and the King is supposed to be Party in all Actions which punish Trespases in a criminal Manner, as the Ejectment is when it commences by original Writ, returnable in the *King's Bench*; and therefore there lies no Writ of Error but in Parliament on a Judgment given in *Banco Reg.* upon an Original.

Formerly, in the 17th Year of *Car. 2.* the Court published a Rule, that they would not allow any Person to take Judgment

ment against the casual Ejector, without a Certificate, that a Latitat was taken out, and Bail filed, because the Court had no Authority to proceed, without the Defendant appear'd to be a Prisoner of the Court, unless by Way of Original; but now such Motion is granted without a Certificate, because it is sufficient if the Bail be filed, for a casual Ejector after the Rule drawn up, but Bail must be filed for the casual Ejector, before you can oblige the Tenant in Possession to accept the Declaration, since there is no Cause in Court against the casual Ejector, in whose Place the Tenant in Possession comes, till Bail is filed against him; and therefore he is not obliged to accept a Declaration, or to confess Lease, Entry, and Ouster at the Assizes, till Bail be filed; and if no such Bail be filed by the casual Ejector, and the Plaintiff goes to Trial against the Tenant in Possession, the Court will set aside any Judgment given against the casual Ejector; but if no Bail be filed in Ejectment, and a Writ of Error be brought, and it appears by the Attorney's Books, that the Attorney had his Fee to file Bail, and the Attorney was dead, there the Court ordered Bail to be filed *nunc pro tunc*, that no Error might appear upon Record; because as it was on the Part of the Defendant to file Bail, there-

therefore he shall not be allowed to take Advantage of his own Error; and tho' the Plaintiff proceeded without any Bail filed by the Defendant, yet since the Defendant's Attorney had his Fee to file such Bail, and as there was no proper Remedy against the Defendant, because he had given the Fee, nor against the Attorney, because he was dead; therefore it became the Justice of the Court to set it right, that the Plaintiff might have no Mis- chief.

But there is no Necessity for a *Latitat*, because if the casual Ejector files common Bail, he admits himself a Prisoner of the Court; for being admitted out to Bail, implies he was once a Prisoner, and whether he came into Court regularly by *Latitat*, or not, yet the Judgment is not *coram non judice*.

If the casual Ejector accepts the Declaration, pleads, and thereby Judgment is given against him, the same is recorded; and it appears thereby, that he has taken a Declaration as a privileged Person: So if the Tenant in Possession makes himself Defendant, and accepts a Declaration, he must file common Bail according to the Rule; but there is no need of a *Latitat*, because the *Latitat* is no Part of the Record; since by filing common Bail, he ac- know-

knowledges himself to be a privileged Person, and then the Suit has as good a Commencement as it had a Beginning from the Bill. If a Party does not come to the Assizes, and confess Lease, Entry, and Ouster, according to the Rule, when he has accepted the Declaration, he can have no Writ of Error, because he is no Party to the Record against the casual Ejector, and consequently can have no Writ of Error therein; and if upon the Declaration delivered to him, the Plaintiff is *Non Pros'd*, yet the Defendant has not any Judgment thereon, to be corrected in a Writ of Error, but the Judgment is against the casual Ejector upon other Record, because of the Words, *Et super triationem exitus cognovit Dimissionem, Intractionem, & actualem Ejectionem, &c.*

1 Keb.
249. Sir
H. Middleton's
Case.

Note; The Judgment against the casual Ejector cannot be entered till the *Postea* be returned, which is endorsed, that the Nonsuit was for want of confessing Lease, Entry, and Ouster; for it does not appear that the Defendant has not complied with the Rule, till after the Assizes, at which the Cause was to have been tried; and therefore the Judgment cannot be enter'd till the next Term after such Assizes.

If the Cause be adjourned for Difficulty into the *Exchequer* Chamber, since the Court

Court itself delays the Plaintiff, they will, upon a Rule delivered to the Defendant to shew Cause to the contrary, enlarge the Term, unless the Defendant can shew very good Cause to the contrary, because the Defendant having enter'd into a Rule to confess a Lease, without mentioning the Term, it must be understood to be such a Lease, as is adapted for the Trial of the Plaintiff's Title, especially since the Defendant, by coming into the Room of the casual Ejector, had delay'd the Plaintiff from getting the Possession; for tho' it may be said to be the Plaintiff's Fault for not delivering a Declaration of a Term large enough, whereon to get Judgment; yet since the Defendant delays him by the Permission of the Court, it is not fit the Original Shortness of the Term should turn to his Prejudice.

But this Case is said in *Salk.* to be done Salk. 257. by Consent of Parties, that is, that the Court would not take further Time to adjourn and deliberate, where the Term was near spent, unless the Parties would consent to enlarge it, even where the Parties were hung up by an Injunction from the Court of *Chancery*, the Court refus'd to enlarge the Term without the Consent of the Parties, because that would be to erase and alter the Record of the Plaintiff's

tiff's Declaration, which they will not do without Consent.

The Court hath changed the Plaintiff in Ejectment after the Declaration delivered, and hath enlarged the Term, where the Cause hath been long in Agitation, and Judgment entered against the Plaintiff after he is dead. *5 Mod. 333.*

In Ejectment, where there are divers Defendants for the same Premisses, and one appears, and confesses Lease, Entry, and the other does not, the Plaintiff cannot proceed against the rest; but he must be nonsuited, because both the Defendants not admitting the Demise, and the Plaintiff not proving an actual Entry and Demise, he cannot maintain his Declaration; but if there appeared any Covin between such Persons not appearing and the Lessor of the Plaintiff, the Court will stop the Judgment against the casual Ejector for their Parts that did not confess Lease, &c. because a Declaration was delivered to each of them for their respective Parts; and therefore where one does not pay Obedience to the Rule, the Plaintiff has Judgment against the Ejector for his Part only.

And where there are several Defendants, to whom the Plaintiff delivers Declarations, that are severally concerned in Interest;

and

1 Vent.

355.

2 Vent.

195. 4.

and the Plaintiff moves to join them all in one Declaration, yet the Court will not do it, but the Plaintiff must deliver several Declarations to each of them, because each Defendant must have a Remedy for his Costs, which he could not have, if they were joined in a Declaration, and the Plaintiff prevailed only against one of them, and by this Means the Plaintiff might have a Tenant of his own, Defendant, with others, in order to save the Costs. 2 Keb. 524.

The Plaintiff in Ejectment, tho' he is but nominal, yet if he be not found, or if he be not able to pay the Costs, the Attorney or Solicitor is liable, or may be committed until he pay the Costs, or produce a Plaintiff that is able to pay them. *Honloe, Peters and Backs, 6 Mod. 309. Lev. 66.*

If the Plaintiff in Ejectment, who is but nominal, dies, yet the Action shall not abate, because if there be any other Person of the same Name, the Court will intend him to be the Person mentioned in the Declaration, because he is only nominal; and therefore while there is any Person of the Name living, the Lessor of the Plaintiff, who is only concerned in the Interest, may proceed in the Suit. 3 Keb. 772.

But if the nominal Plaintiff releases to

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Brownl.
128 to 133.

Salk. 260.

1 Saund.

319.

1 Sid. 223.

1 Mod. 10.

1 Vent. 42.

& 332.

3 Keb. 218.

1 Vent. 248.

Salk. 246.

one of the Tenants in Possession, who is made Defendant, such Release is a good Bar, because the Plaintiff can't recover against his own Release, since he is Plaintiff on the Record; but *Quare*, if such Release were pleaded, whether the Court would not permit the Lessor of the Plaintiff, to change the Name of such nominal Plaintiff? For his Release is said to be a Contempt.

The Confession of Lease, Entry and Ouster, is not a Confession of any Entry sufficient to make out the Plaintiff's Title; where an Entry is necessary thereunto, as if an Entry was necessary to avoid a Fine, and by C. J. *Holt*, or to take Advantage of a Condition broken; but C. J. *Hale* allow'd that the Confession of such Entry was Evidence of an Entry, if the contrary did not appear; as if the Ejectments were delivered within the Time prescribed by the Statute, to avoid a Fine; but this now is totally disallowed, and an actual Entry must be proved, where it is necessary to compleat the Plaintiff's Title. 1st, Because the Defendant is compellable by the Court to confess Lease, Entry, &c. and to make that a Proof, that there was an actual Entry which was extorted from the Defendant, and upon that Presumption to turn the Defendant to prove the contrary,

were

were to compel the Defendant to the Proof of a Negative, which in all Cases is difficult, and in some, impossible to be done.

Besides, the Words of the Rule are, that the Defendant shall confess Lease, &c. and insist *super Titulum tantum*, and therefore the Intention of the Court was, that the Tenant in Possession should insist upon every Thing that was necessary for the Defence of his own Title, and such is the Denial of the Plaintiff's Entry, in establishing his own Title; and therefore it is a Point that by the Rule he may insist upon, notwithstanding such Confession.

IF *A.* lets to *B.* and *B.* to *C.* to try the Title, the Confession of Lease, &c. extends only to the Lease made to *C.* and not to that made to *B.* because the Confession by the Rule extends only to the Lease made to try the Title, and not to the Lease, which is Part of the Title of the Lessor of the Plaintiff; and *Hale* admitted this, when he ruled the Entry to be confessed by the formal Confession of Lease, &c. for he thought that where an Entry was confessed, and a Lease, as tho' it had been made upon the Land, that thereby a Claim was confessed to the Fee-simple of the Land itself; for a Confession of Entry to let, he understood to be a Confession

1 Vent. 248.

2 Keb. 218.

of a Claim of the Fee-simple, because otherwise he could not have Power to demise, which is confessed by the Rule; but notwithstanding in this Case, the Lease, in order to try the Title, being a distinct Lease from that, by which the Lessor of the Plaintiff claims, he held, that must be proved.

My L. C. J. *Hale*, when he held that the Entry was sufficiently confessed by the Rule, said, that otherwise an Entry would be necessary to be proved on every Disseisin, and indeed before this new Rule, an Entry was necessary, in order to give the Plaintiff Power to make a Lease; but after that it was otherwise, because an Entry did not make Part of the Plaintiff's Title, where the Lessor of the Plaintiff is disseised, for he had a compleat Title before the Disseisin, which was that Injury done to him, and should have recovered Damages in the Assize from the first Act of Disseisin, and the Design of Ejectment was without the formal Preparation of an Entry and Lease, to bring the Cause to as sudden a Trial, and in as short a Method, as had been formerly used in an Assize.

Note; if a Man enters and delivers a Declaration in Behalf of the Lessor of the Plaintiff; this is no Entry to avoid a Fine, unless

unless an exprefs Authority was given to enter for that Purpose, because the Entry must be pursuant to the Intention, and that was, to deliver a Declaration, in order to try the Plaintiff's Title, and not to make any Title to the Lessor of the Plaintiff.

Aliter Judicium intretur per defalt' pro Quer.

From hence it is, that Judgment is given against the casual Ejector for want of confessing Lease, &c. at the Assizes; and if the Defendant does not enter into the Defence, and confess Lease, &c. he can't bring a Writ of Error to reverse a Judgment, to which he was not a Party, and if he brings such Writ in the Name of the casual Ejector, the casual Ejector being a Friend to the Plaintiff's Lessor, may either release the Errors, or upon a Motion for a *Non Prof.* the Court will order it to be entered; but in a Writ of Error from an inferior Court in the casual Ejector's Name, the Court will not enter a *Non Prof.* tho' his Release of Errors be shewn, because they ought not to proceed in this compendious Way by confessing Lease, &c.

By the Words of the Rule antiently *Ante f.* made, it appears that the original Practice in *Banco Regis* was, that upon confessing,

Lease, &c. the Defendant paid no Costs for it.

Thus the Words of the Rule differ'd from that of the *Common Pleas*, which are, that the said Defendant shall pay to the Plaintiff his Costs, to be taxed by the Prothonotary thereon; but in *Banco Regis*, the Rule only excused the Plaintiff from the Costs of the *Non Prof.* in case the Defendant did not at the Assizes confess Lease, &c. and therefore in 13 Car. 2. upon a Motion that the Defendant should pay Costs for not confessing Lease, &c. it was denied, but afterwards the Rule came to be, that upon the Defendant's denying at the Assizes to confess Lease, &c. the Rule for confessing it should be carried to the Master, who tax'd Costs upon it, which Costs were to be demanded of the Defendant by some Person having Authority from the Plaintiff's Lessor for so doing; and if the same were not paid, the Court, upon Affidavit and Motion, would grant an Attachment against the Defendant; for it is but reasonable, that when the Plaintiff is at Charges to bring his Witnesses to a Trial, the Defendant that deprives him of the Benefit of that Trial, should pay his Costs; and the new Rule now runs, *Et si super triationem exitus illius prædicti A. recusabit performare istam regulam*

L. P. R.

504.

1 Keb. 502.

Will. &

Hale.

Ante 50.

lam, & querens ratione inde non prosequi potest breve suum, tunc taxatio Custagiorum super hujusmodi non prosecutione cessabit, & prædictus A. solverit talia Custagia querenti qualia per Curiam Domini Regis hic taxabuntur, & adjudicabuntur pro tali defectu suo in non performance hujus regulæ, & judicium intrabitur versus eundem C. modo casualem ejectorem per Defaltum. Et ulterius ordinatum est, quod si veredictum redditum fuerit pro prædict. (the Defendant) vel quod prædict' quer' non Pros' foret propter aliquam aliam Causam quam pro non Cognitione Dimissionis, &c. and so to the End of the Rule. So that it appears by the new Rule, that the Practice was altered in Compliance with the Common Pleas, that the whole Business of Ejectments might not run through that Court.

If an Infant be Tenant in Possession, and the Plaintiff obtains Judgment against the casual Ejector for want of Confession of Lease, &c. and the Infant brings a Writ of Error in the casual Ejector's Name, and the Defendant in Error sets up a Release from the casual Ejector, upon making this out to be the Case of the Infant, on a Motion on the Writ of Error, the Court will not suffer such a Release to be pleaded in Bar to such Error, because

there is no Laches to be imputed to the Infant, for want of Confession of Lease, &c. and therefore here they renew the old Practice, to suffer the Defendant below to carry on the Suit in the Ejector's Name to the End.

1 Keb. 827. If there be Baron and Feme Lessor in Ejectment, and one dies after entring into the Rule, the surviving Person is liable to pay Costs, because Costs are to be paid *per Dimissorem quer'* and both of them are in the Lease.

1 Keb. 227. If a Stranger carries on a Suit in another's Name, who has a Title, and yet is so poor that he can't pay Costs; in case he fails, upon Affidavit of such Matter, the Court will order such Person, who carries on the Suit, to pay Costs to the Defendant.

If an Infant delivers a Declaration to the Defendant, some Friend or Guardian must be set up as Plaintiff to answer the Defendant's Costs. But if such Person dies insolvent, so that the Defendant has no Remedy by this Rule, the Infant himself must answer the Costs, because the Rule was enter'd into for the Infant's Benefit, and even Infants must not disturb the Possession of others by unlawful Entries, without being punish'd with Costs.

1 Sid. 379. If a Man has a Verdict in Ejectment,
and

and Costs taxed, and an Attachment issues for Non-payment of the Costs, the Defendant shall not have an Ejectment against the Plaintiff in the same Court, till he has paid Costs, but he may proceed in Ejectment in another Court, without Costs paid; the Reason is, because the same Court will see an Obedience paid to their Rules, before they will suffer the disobedient Person to proceed in a Cause of the same Kind; but another Court cannot take Cognizance of the Rules of a distinct Court, but every Court can enforce Obedience to its own Rules.

I shall here take Notice in what Cases they must proceed in the old Method, and where they could not have proper Remedies by proceeding in the Modern Salk. 255. Way by Confession, &c. and this, before the late Act of Parliament, was in the following Cases.

First, Where the Houses, or Things, for which the Ejectment was brought were empty, for in that Case no Declaration could be delivered; or an Affidavit made of the Delivery of it, and then the Court could not proceed to grant Judgment against the casual Ejector; and therefore they were forced to proceed the old Way, by sealing a Lease on the Land; and give Rules to plead, and when those Rules for

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Plead.

Pleading were out, they were to make an Affidavit of this whole Matter; and upon such Affidavit, the Court granted Judgment; but there could be no Judgment against the casual Ejector, without moving the Court, though the Rules for pleading were out, because the Court will not grant any Judgment against the casual Ejector, who is only nominal, without such proper Affidavit; lest, otherwise, a third Person should be tricked out of his Possession.

35 Car. 2.
B. R.
Mo. 101.

So if the Tenant in Possession kept his Door shut, the best Way was to seal a Lease on the Land as usually, before these Rules were invented; but it seems in case that the Practice and Fraud of the Tenant had been made appear to the Court by Affidavit, the Court would grant Judgment against the casual Ejector, *nisi*, &c. for then the Fraud of the Tenant superseded the Necessity of giving Notice to him; but by the following Act of Parliament it may be perceived the Law is altered therein.

Secondly, When a Corporation is Lessee of the Plaintiff, they must give a Letter of Attorney to some Person to enter and seal a Lease upon the Land; for Corporations can't make an Attorney, or Bailiff, but by Deed, nor can they appear, but by making

a proper Person their Attorney by Deed ; therefore they cannot enter and demise upon the Land in Person, as natural Persons can, nor can they substitute an Attorney to enter into a Rule for their Costs, nor will an Attachment go against them for Disobedience to that Rule, and by Consequence they are put to make an actual Lease upon the Land, which Lease must try their Title, and then the Attorney may proceed in the common Method, that is not altered by the said Statute.

If a Corporation be aggregate of many, they may set forth the Demise in the Declaration, without mentioning the Christian Name of the Master or Wardens of the Corporation ; but if the Corporation be sole, the Name of Baptism must be inserted ; as if the Demise be made by a Bishop, because where the Corporation is aggregate, the Name solely consists in its Character, but where sole, it consists totally in that Person ; therefore you have no sufficient Specification of that Person, without mentioning his Name.

Dy. 86. in
the Mar-
gin.

Thirdly, The third Case in which the old Method was to be observed, was, where the several Interests of the Lessors of the Plaintiff be not known, and there it was a good Way to seal a Lease upon the Premises, lest they should fail in setting out
in

in their Declarations the several Interests which each Man passes; and in that Case it is the best Way to proceed in the old Manner, even now.

Fourthly, Where the Proceedings are in an inferior Court, there they must proceed by actually sealing a Lease, because they can't make Rules to confess Lease, &c. inasmuch as such Courts have not an Authority to imprison for Disobedience to their Rules; and the Reason is, the inferior Courts, having but a limited Authority, cannot make any new Rules to bind Persons that don't come in by proper Process of such Court; but the Courts above, having an unlimited Authority in every Thing within their Jurisdiction, shall bind any Person that consents to their Rules; and therefore in such inferior Courts the Lease is sealed on the Land, and the Defendant tries the Title in the Name of the casual Ejector, to save Expence.

1 Keb.
795.

1 Keb.
795, 6.
Herm. &
Cock.
1 Sid 331.
Cr. Car.
828.

If an Ejectment be brought in an inferior Court, and a *Habeas Corpus* be brought to remove it, and the Plaintiff in the Ejectment declares against the casual Ejector, there may be a Rule to confess Lease, &c. as if he had originally declared in the Court above, and the Court will not grant a *Procedendo*.

If

If a *Habeas Corpus* be brought to re-^{2 Keb.}
move a Cause in Ejectment out of an in-^{119.}
ferior Court, and the Lands lie within
their Jurisdiction, and the Lessor of the
Plaintiff seals a Lease on the Premises;
the Courts above will grant a *Procedendo*,
because the Title of the Land is a local
Matter, properly within the Jurisdiction
of the Court below, where, if they pro-
ceed regularly, they shall not be prohibi-
ted; but if the Lessor has not sealed a
Lease on the Premises, they will not.

But if the Lands do lie partly within ^{2 Keb. 69.}
the *Cinque Ports*, and partly without, the
Defendant cannot plead above the Juris-
diction of the *Cinque Ports*; for tho' the
Land be local Matter, yet the Demise is
transitory, and triable any where; there-
fore, tho' the Plaintiff may lay his Action
for that which lies within an inferior Ju-
risdiction in the Court below, if he takes
proper Measures for that Purpose; yet if
he will lay it above, since the Demise is
transitory, the Defendant cannot stop his
Proceeding, because the Courts above, for
such transitory Matters, have a proper
Jurisdiction.

It seems that if the Defendant in an in-^{M. 18.}
ferior Court comes into a Rule to confess ^{Car. B. R.}
Lease, &c. and the Cause be removed by ^{Moore}
Habeas Corpus, and the Judge of the infe-^{86,}
rior Court grants an Attachment against
the

1 Keb.
285.

the Defendant for Disobedience to the Rule, the superior Court will grant an Attachment against such Judge for compelling Obedience to their Rules, and thereby obstructing the Business of the superior Courts, since the Defendant is not bound by the Rule he entered into in the inferior Court, such Rule being only the Practice of the superior Courts.

I shall here shew the Manner of the old Way of proceeding in Ejectment; and that was, by sealing a Lease on the Premises by the Party in Interest, who was to try the Title.

Style's P.
R. 165.

This at first was ruled to be no Maintenance, or within the Statute for buying of Titles, since the Lessor demises on the Land, and so is in Possession, the Lease was made to Servants or Friends that could not be presumed to maintain or countenance the Action; but if it were sealed to a great Man, who might maintain the Suit, this was properly Maintenance.

If a Man seals a Lease upon the Premises, he need not give Notice to the Party in Interest, at the Time of his Entry, or sealing such Lease; but it is sufficient to give Notice to the Tenant in Possession afterwards where it was done, that being sufficient Notice for the Party to make his Defence; and it is not necessary that the

the Plaintiff should give Notice of his Preparation, but of his Trial.

By the antient Method, the Person, ^{Stry. Rep.} that had Title of Entry, used to enter ^{468.} upon the several Parcels of the Land, and ^{Ray. 93.} deliver Declarations in the Name of his ^{1 Keb.} own casual Ejector, who did actually enter on the Premisses to eject, but the Court required Notice to the Tenant in Possession, that he might not be turned out without an Opportunity of making his Defence, and then such Tenant in Possession used to move the Court, that as the Title of the Land belonged to him, he might defend in the casual Ejector's Name, which the Court upon an Affidavit of that Matter used to grant, and that the Suit should be carried on in the casual Ejector's Name, the Tenant in Possession saving him harmless, and then the casual Ejector was not permitted to release Errors in Prejudice of the Tenant in Possession, since the Suit was carried on in his Name by Rule of Court, and the Process for Costs was taken out against the casual Ejector, and he was obliged to put the Bond of the Tenant in Possession in Suit, who undertook to save him harmless. ^{705, 740.}

In the old Way of proceeding in Eject- ^{Co. Lit.} ment, if there were several Parcels of ^{52. Palm;} Land, in the Possession of several Persons, ^{402.} the

the Way was, to make several Leases, and to deliver several Declarations upon such several Leases to the Tenants in Possession; and that was absolutely necessary when the Freehold was in distinct Persons; but where the Freehold was in the same Person, there the Difference was, whether it was in the County; or not; for where different Entries were necessary, there were to be different Leases, where there was one Disseisor of Lands in one County, though he demised for Years, or at Will, to several Persons, yet I might enter upon one of such Lessees in the Name of all, and make a Lease according to the old Method, and comprehend them all therein; and the Reason was, because the Entry to devise Freeholds must be made according as the Freehold divides itself; and therefore, if the Disseisor had made a Lease for Life to three several Persons, the Entry must have been several, and the Leases several also; but if one had disseised me of two Acres in the same County, and I entered into one, without saying in the Name of both, such Entry did not devise the Right; and therefore where there were several Acres put into the same Declaration, and they make their Entry in the old Way, it must have been in the Name

Name of all the Acres named in such Declaration, because otherwise, the Entry being not interpreted by Words, the Act of Entry should go no farther than the lowest Measure of Land into which he entered.

To understand this, we must consider, that the Entry was the same thing with the Vindication or *Calumnia* in the Civil Law, and this Entry was of equal Notoriety with the Feoffment, for as the Feoffment was antiently made upon the Land *coram paribus*, who subscribed the feudal Instrument in *hiis testibus*; so it seems the Entry was made upon the Land, and afterwards the Claim recorded in the Lord's Court, and hence called *Clameum*, *vel Calumniam apponere, vel advocare*; but afterwards they allowed the Feoffment to be good, tho' it was attested by Strangers out of the Land, and not made or recorded *coram paribus*; but the Manner of recording the Claim of Liberties before the Justices in Eyre remained long after, as appeared by the Register, which seems to be a Continuance of the ancient Practice; but when the Feoffment was not attested by the Parties in *Cartis*, yet they were attested and tried by the *Pares Comitatus*; and therefore if the Land lay in two Counties, the Entry must have been in each, because the Attestation of both

Digest.
Feud. v:
lib. 2. tit.
8. tit. 2.
Donatus.
441. 2.

Facts,

Facts, if controverted, must have been tried by the *Pares Comitatus*.

Cr. Car.
165.

Cr Jac. 563.

Yelv. 1, 2.

Brow. 248.

Hob. 314.

If Husband and Wife make a Lease by Indenture, and in it make a Letter of Attorney to seal and deliver it as their Deed to the Lessee upon the Land, and such Lessee, in order to try the Title of the Land, declares upon a Lease made by Husband and Wife, it is bad; but if there be a Necessity to try the Title of the Wife in the old Method, the Husband and Wife must execute the Lease upon the Land in their proper Persons; because the Wife not being a proper Person by herself, can't constitute an Attorney; but this Practice is sunk by the new Method, since by the Rule the Demise is confessed, as supposed to be on the Land.

The Act of Parliament that has been often mentioned, which in several Instances hath alter'd the Common Law, is an Act passed in the 4th of King George the Second, which is as follows:

Be it Enacted, *That in case any Tenant for Life, or any Term of Years, or other Person coming into the Possession of Lands or Tenements by Collusion with such Tenant, shall wilfully hold over any Lands or Tenements, after the Determination of such Term or Terms, and after Demand made, or Notice in Writing given, for delivering*

giving the Possession thereof by the Landlord, or Lessor, the Person so holding over shall pay double the yearly Value, and the Defendant in such Action shall give Special Bail, and have no Relief in Equity.

In all Cases between Landlord and Tenant, after the twenty-fourth of June, One thousand seven hundred and thirty-one, when Half a Year's Rent shall be in Arrear, the Landlord, having a lawful Right to re-enter for Non-payment, may serve a Declaration in Ejectment, without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage, or notorious Place of the Lands which shall be deemed a legal Service; and on Proof that Half a Year's Rent was due before the said Declaration was served, and no sufficient Distress on the Premises, the Lessor shall recover Judgment and Execution as fully as in case a formal Re-entry had been made; and if the Lessee shall suffer Judgment to be recovered on such Ejectment and Execution, without paying the Arrears and Costs, and without filing a Bill within six Months after Execution, he shall be barred from all Relief in Law or Equity, other than by Writ of Error; and the Lessor shall hold the demised Premises as discharged from such Lease: But not to bar
the

the Right of any Mortgage, provided he pay all Rent in Arrear, and Costs, within six Months after Judgment obtained, and perform all the Covenants of the Lessee.

If a Lessee shall, within the Time aforesaid, file a Bill for Relief in Equity, no Injunction is to be granted, unless he, within forty Days after an Answer filed by the Lessor, shall deposit in Court the whole Rent in Arrear, besides Costs, subject to the Decree of the Court; and if the Lessor shall actually enter into the Possession of the demised Premises, and the Lessee, on filing a Bill within the Time limited, obtain a Decree in his Favour, the Lessor is to be accountable only for the Profits really made of the Premises during his Possession thereof, and the Lessee is to pay to the Lessor so much Money as that fell short of the whole Rent in Arrear, before he be restored to his former Possession.

But if the Tenant, before the Trial, will either tender to the Lessor, or bring into Court the Rent in Arrear, together with Costs, all further Proceedings shall cease; and if the Lessee be relieved in Equity, he shall enjoy the demised Premises, according to the Lease thereof, without obtaining a new one.

All Persons, Bodies Politick and Corporate, may have the like Remedy by Distress, and

and Sale, in Cases of Rents-seck, Rents of Assize, and chief Rents, which have been duly paid for three Tears, within twenty Tears before the first Day of Parliament, or shall be hereafter created, as in Case of Rent reserved upon Lease.

If any Lease shall be duly surrendered, in order to be renewed, and a new Lease granted by the chief Landlord, it shall be as good and valid, as if all the Under-Leases had been likewise surrendered before the Taking of such new Lease; and all Persons vested therein shall be intitled to the Rents, and have the like Remedy for the Recovery thereof, and the Under-Lessees are to enjoy the demised Premises as fully as if the original Leases had been still continued; and the chief Landlord shall have the same Remedy for recovering his Rent, as he would have had, in Case the respective Under-Leases had been renewed under such new principal Lease.

This Act not to extend to Scotland.

Writs of Habeas Corpus, Certiorari and Supersedeas.

A Habeas Corpus to remove a Cause out of the Sheriff's Court in London, returnable in the Court, is thus:

George the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of London,
Greet-

Greeting. We command you (and every of you) that ye have, before us at *Westminster* on *Tuesday* next after the *Octave* of *St. Hillary*, under safe and secure Conduct, the Body of *C. D.* who is said to be detained in our Prison under your, or one of your Custodies, together with the Day and Cause of his being taken and detained (by whatsoever Name the said *C.* be therein charged) to answer to *A. B.* in an Action of Debt, and further to do and receive all and singular those Things which our Court before us in this Case shall then and there consider of; and have you there, at the same Time, this Writ. Witness *Robert Lord Raymond* at *Westminster* the 28th Day of *November*, in the sixth Year of our Reign.

Ventris.

A Habeas Corpus to remove a Person from the Fleet Prison to the King's Bench.

George the Second, &c. to the Warden of our Prison of the *Fleet*, Greeting. We command you, that you have before us at *Westminster* on the *Octave* of the Purification of the Blessed Virgin *Mary*, the Body of *A. B.* who is said to be detained in our Prison of the *Fleet*, under your Custody, under safe and secure Conduct, together with the Day and Cause of his being taken and detained (by whatsoever Name the said *A. B.* may be charged in the same) to answer to *C. D.* in an Action of Trespass, and also to a Bill of the said *C.* by him exhibited against the said *A.* for a Debt of One hundred Pounds, according to the Custom of our Court before us, and further

ther to do and to receive what our said Court before us shall in this Case then and there determine; and have you there, at the same Time, this Writ. Witness, &c. as before.

A Habeas Corpus on a Languidus in Prifona returned, i. e. that the Party is Sick in Prison.

George the Second, &c. to the Sheriff of Middlesex, Greeting. We command you, that you have before us, on *Tuesday* next after the Morrow of the Purification of the Blessed Virgin Mary, the Body of *A. B.* taken by you, and detained in our Prison under your Custody, altho' he be there Sick, (as by your Return, or by the Return of *A. B.* and *C. D.* mentioning the late Sheriff) late Sheriff of the said County, sent to us into our Court before us, it does manifestly appear, to answer to *C. D.* in an Action of Debt, or in an Action of Trespass, (and then as in former) or if it be to charge a Man in Execution, then say, To make Satisfaction to *C. D.* for twenty Pounds, &c. for his Damages which he hath sustained, as well by Reason of the said *A.*'s not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at Westminster aforesaid, in your County, as for his Expences and Costs laid out by him about his Suit in that Cause, whereof the said *A.* is convicted, as appears to us on Record; and further to do and receive, as in the former.

A Habeas

A Habeas Corpus to the Palace Court.

George the Second, &c. to the Judges of our Court of our Palace at *Westminster*, and every of them, Greeting. We command you, and every of you, that you have before us at *Westminster*, on *Friday* next after three Weeks from the Day of Saint *Michael*, under your safe and secure Conduct, the Body of *J. K.* detained in our Prison under your Custody (as we are informed) together with the Day and Cause of his being taken and detained, by whatsoever Name the said *J. K.* is reputed in the same, to answer to *J. B.* in an Action of Trespass, and also to a Bill of the said *J. B.* against the said *J. K.* for thirty-four Pounds upon Promises unperformed, to be exhibited according to the Custom of our Court before us, and then and there to do and receive all and singular those Things, which our said Court before us shall then and there consider of in this Behalf; and have you there, at the same Time, this Writ. Witness, &c.

A Habeas Corpus on a Cepi Corpus returned.

George the Second, &c. to the Sheriff of *Middlesex*, Greeting. We command you, that you have before us at *Westminster*, on *Tuesday* next after the Morrow of the Purification of the Blessed Virgin *Mary*, the Body of *C. D.* taken by you, and in our Prison detained under your Custody (you having charged your

yourself with him by your Return lately sent into our Court before us to answer to *A. B.* in an Action of Trespafs (or Debt) as the Case is (then as in the former.)

A Habeas Corpus ad Testificandum.

George the Second, &c. to *R. M. Esq;* being in the Custody of the Marshal of our *Marshall* before us, Greeting. We command you, that you have under safe and secure Conduct the Body of *A. B.* who is said to be detained in our Prison under your Custody, by whatsoever Name the said *A.* may be charged in the same Prison, before our faithful and beloved *Robert Lord Raymond*, our Chief Justice, assigned to hold Pleas in our Court before us at *Westminster*, in the great Hall of Pleas there (on the Day of the Sittings) at eight of the Clock in the Forenoon of the same Day, there to testify the Truth, to the best of his Knowledge, in a certain Cause now depending in our Court before us, and then and there to be tried between *C. D.* Plaintiff, and *E. F.* Defendant, in an Action of Covenant (or as the Case is) and then immediately after the said *A. B.* hath then and there given his Evidence before the said Chief Justice to return him the said *A. B.* to the same Prison, under the like safe and secure Conduct; and have you there, at the same Time, this Writ, &c.

A Certiorari to remove an Attachment in London.

George the Second, &c. to the Mayor,
L Aldermen,

Aldermen, and Sheriffs of the City of *London*, Greeting. We being desirous, for certain Reasons, that there should be certified to us as well certain original Bills or Plaints levied or affirmed before you, any, or either of you, against *H. H.* Citizen and Turner of your said City, at the Suit of *S. A.* in an Action of Debt, as also all Attachments made thereupon, on the Money, Goods, or Chattels of the said *H. H.* in the Hands of the said *S.* or of any other Person or Persons whatsoever in our Court before you, any, or either of you; we command you, that you certify to us on *Tuesday* after the Morrow of the Purification of the blessed Virgin *Mary* at *Westminster*, all the said Plaints and Attachments, with all Things touching the same, in as full and ample Manner as the same now remain in our Court before you, together with this Writ that we may cause to be further done thereupon what shall appear to us of Right ought to be done. Witness, &c.

A like Certiorari returnable before a Judge at his Chamber.

George, &c. to the Mayor, Aldermen, and Sheriffs of the City of *London*, Greeting. We being desirous, for certain Reasons, that there should be certified to us, as well a certain Complaint or Original Bill, levied or affirmed in our Court before you, some, or one of you, against *J. L.* Executor of the last Will and Testament of *S. D.* deceased, at the Suit of *J. S.* in an Action of Debt, as also a certain Attachment made thereon for forty Pounds
in

in Money, as the Money of the said *S. D.* at the Time of his Decease, and attached in the Hands and Custody of *J. C.* do therefore command you, and every of you, that immediately after the Receipt of this Writ, you send the said Complaint, Original Bill and Attachment, together with all Things touching the same, in as full and ample Manner as they now remain before you, any, or either of you, before Sir *Francis Page* Knight, one of our Justices assigned to hold Pleas in our Court before us, at his Chambers, situate in *Serjeants-Inn* in *Fleet-Street*, that he our said Justice may cause to be done in this Particular what shall appear to him of Right ought to be done; and have you there, at the same Time, this Writ. Witness, &c.

A Writ of Certiorari to the Court of the Mayor, &c. of the City of Exeter, is thus:

George the Second, &c. to the Mayor and Bailiffs of our City of *Exeter*, and to every of them, in our Court at the *Guildhall* there, Greeting. Whereas *N. M.* Executor of, &c. had lately in our said Court of our said City, according to the Custom of the same Court, impleaded one *J. P.* late of *N.* in the County of *D.* Gentleman and Alderman of the said City of *Exeter*, in an Action of Debt upon Demand of One hundred Pounds, and thereupon, in our said Court before you, obtained Judgment against the said *J.* for the Recovery of the said Debt; and we, for

certain Reasons, being desirous that the said Record should by you be certified to us, do therefore command you, that you send under your Seals the Record of the said Recovery, with all Things touching the same, into our Court before us at *Westminster* (such a Day, &c.) plainly and distinctly, and in as full and ample Manner as it now remains before you, together with this Writ, so that we, on the Part of the said N. may be able to proceed to the Execution of the said Judgment, and do what shall appear to us of Right ought to be done. Witness *Robert Lord Raymond*, &c.

To the City of Bristol.

George the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of *Bristol*, and to the Mayor and Constable of the Staple of the same City, and also to the Bailiffs, Mayor, and Community of the said City of *Bristol* of the Court of *Tolsey* there, and to the Bailiffs of the said Mayor and Community of the same City in their Court of *Pye-Powder*, and to every of them, Greeting. We, for certain Reason, being desirous that there should be certified to us, as well all Plaints levied or affirmed in our Court before you, any or either of you, against *W. D.* at the Suit of *W. S.* as also whatsoever Attachments are made on those Plaints, any, or either of them, on the Money, Goods, or Chattels of the said *W. D.* in the Hands of *A. B.* and *C. D.* &c. or any of them, do therefore command you, and every of you, that

that you send the said Plaints, and every of them, with all Things relating thereto, before us at *Westminster*, on *Tuesday* next after the *Octave* of *St. Hillary*, in as full and ample Manner as the same now remain before you, any, or either of you, together with this Writ, that we may cause to be further done thereupon, what shall appear to us of Right ought to be done. Witnel, &c.

A Certiorari to the Chief Justice of the Common Pleas to certify Warrants of Attorney.

George the Second, &c. to our beloved and faithful Sir *Robert Eyre* Knight, Chief Justice of our Court of *Common Bench*, Greeting. We, being desirous, for certain Reasons, that it be certified to us, whether *Edward C.* Executor of the Last Will and Testament of *Edward Cleve*, his Father lately deceased, made *H. W.* Gentleman, his Attorney on Record against *T. S.* in an Action of *Trespass upon the Case*, before you and your Brethren our Justices of the *Common Bench* of the Term of *St. Hillary*, in the fourth Year of our Reign, therefore we command you, that you search the Records and other Remembrance-Rolls of Warrants of Attorney, in the County of *Somerset*, being in your Custody on Record of the said Term of *Saint Hillary*, in the said fourth Year of our Reign; and what you shall find therein concerning the said Warrants of Attorney, between the said Parties in the said Action, do you immediately certify to us,

wheresoever we shall be in *England*, together with this Writ. Witness, &c.

A Certiorari to certify an Original.

George the Second, &c. to our beloved, &c. We being desirous, for certain Reasons, that it should be certified to us, whether there be a certain Original Writ between *W. F.* and *D.* his Wife, to present a fit Person to the Church of *T.* in the County of *S.* now of Record in your Custody or not; we command you, that you search the Original Writs and other Remembrances of our said Court of *Common Bench*, that are filed of the Term of the *Holy Trinity*, in the fifth Year of our Reign, in your Custody of the County of the City of *London*, and whatsoever you shall find of the said Writ between the said Parties, together with the whole Return of the same Writ, do you, without Delay, certify to us wheresoever we shall then be in *England*; and have you there, at the same Time, this Writ. Witness, &c.

A Superseas for Want of Declaring upon a Latitat.

George, &c. to the Sheriff of *Suffolk*, Greeting. Whereas we lately commanded you to take *A. B.* if he could be found in your Bailiwick, and safely keep him, so as you might have him before us at *Westminster*, on *Wednesday* next after the Morrow of the *Holy Trinity* last past, to answer to *F. G. Gent.* in an Action of *Trespass*, and also to a Bill of the

the said *F.* to be exhibited against the said *A.* for a Debt of 120 *l.* according to the Custom of our Court before us; and because the said *F.* hath not declared against him the said *A.* within two Terms, altho' the said *A.* in the same Court before us, came and put in Common Bail, at the Suit of the said *F.* in the said Action; therefore we command you; that you altogether cease from taking, attaching, imprisoning, or any Ways molesting him on that Occasion, in any Manner howsoever, at the Suit of the said *F.* and if on that, and no other Occasion, you have taken and imprisoned him, and there detain him, then without Delay do you cause the said *A.* to be delivered out of Prison, in which he is so detained, under the Peril attending the Neglect thereof. Witness: *Robert Lord Raymond, &c.*

The Form of a Rule by Consent in Ejectment, where the Proceedings are by Original, being omitted before, and somewhat varying from that where the Proceedings are by Bill, I beg Leave to insert it here.

It is ordered, with the Consent of both Parties, and their Attornies, that *A. B.* and *C. D.* be made *Defendants* instead of *J. R.* and that they forthwith appear at the Suit of the Plaintiff, and accept a Declaration in an Action of *Trespass* and *Ejectment* for such of the Premises in Question as are in the Possession of *W. M.* their Under-Tenant, and that they forthwith plead thereto Not guilty; and that they shall upon the Trial of the Issue acknow-

ledge *Lease, Entry, and actual Ouster*, and insist upon the *Title* only, otherwise Judgment shall be entred for the Plaintiff against the present Defendant *E. F.* by Default; and if upon the Trial of the Issue the said *A. B.* and *C. D.* shall refuse to perform this Rule, and the Plaintiff by Reason thereof is not able to prosecute his Writ, then the *Taxation* of the *Costs* upon such Nonsuit shall be staid, and the said *A.* and *C.* shall pay to the Plaintiff such *Costs* as shall be taxed and awarded by this his Majesty's Court, for such their Default in not performing this Rule, and *Judgment* shall be entered against the present Defendant *E. F.* by Default: And it is further ordered, that if upon the Trial of the Issue a *Verdict* shall be given for the Defendant; or if the Plaintiff shall be nonsuited for any other Reason, except for not confessing *Lease, Entry and Ouster*, as above, then the Lessor of the Plaintiff shall pay the *Costs*, if the Plaintiff will not.

Cruwys for the Plaintiff.
Baker for the Defendant.

Note; The Form of this Rule is, when it is drawn up particularly, and the *Mesne Tenant* is made Defendant; and when you would have it generally, it is only by leaving out the Words, *such of the Premises in Question as are in the Possession of W. M. their Under-Tenant*, and instead thereof inserting these Words only, *The Tenements in Question*.

The

The Form of an Admission of a Guardian.

The Admission of a Guardian is thus to be written on a Piece of Parchment, cut in the Form of a Bail Piece.

Devonshire. A. B. who is within the Age of twenty-one Years, is now admitted by the Court of our Sovereign Lord the King, before the King himself, by J. S. Gentleman, his Guardian, to prosecute and defend all and all manner of Actions and Suits depending in the same Court, at the Suit of C. D.

Raymond.

This must be carried to the Clerk of the Rules, to be filed and entred with him, for it is no Record till that be done, and the Clerk of the Rules makes a Rule thereon.

The Form of Postea, with a few Observations; together with a Placita, Jurata, and Imparlance, now used in the King's Bench.

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Bench.

A Postea for the Plaintiff on a Record tried, either at the Sittings in London, or Middlesex, where Part is found for the Plaintiff, and Part for the Defendant.

Afterwards, (that is to say) on the Day, and at the Place within contained, came as well the within named A. B. as the within written C. D. by their Attornies within mentioned, before Robert Lord Raymond, the Chief Justice within written, and John Smith, Gent. (he being associated to the said Chief Justice by Force of the Statute in that Case made and provided) and the Jurors of the Jury, whereof Mention is made in the within written Record, being summoned likewise came, and being balloted, tried, and sworn to declare the Truth of the Issue within contained, as to the third Promise and Undertaking mentioned in the within Declaration, declare upon their Oaths, that the said C. D. did undertake in such Manner and Form as the said A. B. hath within declared against him, and do assess the Damages of the said A. occasioned by not performing the said third Promise and Undertaking, besides his Expences and Costs, laid out by him, about his Suit in this Particular, to Fifty Pounds: and for his Expences and Costs, to forty Shillings. And as to the first, second, and fourth Promises and Undertakings, in the within written Declaration mentioned, the said Jurors further declare upon their Oath, that the said D. did not undertake in such Manner,

Manner and Form, as the said *A.* hath within King's Bench. declared against him: Therefore it is considered by the Court of our said Sovereign Lord the King, here before the King himself, that the said *A. B.* do recover against the said *C. D.* the said Damages assessed by the said Jury in the Manner as above; and also fourteen Pounds for his Damages and Costs awarded by this Court of our said Sovereign Lord the King to the said *A.* with his Consent by way of Increase, which said Damages, Expences and Costs, amount in the Whole, to sixty-four Pounds; and be the said *C.* amerced. It is also considered, that the said *A.* as to the said first, second, and fourth Promises, be amerced for his false Claim thereof against the said *C.* and be the said *C.* as to the said first, second, and fourth Promises acquitted, and thereof dismissed the Court, &c.

If the Plessen be on a Trial at the Assizes,

then this is the proper Entry.

Afterwards, (that is to say) on the Day, and at the Place within contained, as well the within named *A. B.* as the within written *C. D.* by their said Attornies within contained, came before Sir Robert Eyre, Knt. his Majesty's Chief Justice of his Court of Common Pleas; and Roger Jennyns Esq; (associated for this particular Purpose) to the said Sir Robert Eyre, and Alexander Denton Esq; another of his Majesty's Justices of his said Court of Common.

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Bench.

mon Pleas, appointed to hold the Assizes in the County of *Norfolk*, by Virtue of his Majesty's Writ, directing the Assizes to be held before any two of the Persons therein named, if all therein should not come there, (the Presence of the said *Alexander Denton* not being expected) and the Jury being summoned and ballotted, according to the Form of the Statute in such Case made and provided, and tried and sworn to declare the Truth of what is within contained, declare upon their Oath, that the *Writing Obligatory* in the Plaintiff's Declaration within mentioned, is the Deed of the said *C.* as the said *A.* hath within declared against him; and they assess the Damages of the said *A.* on that Occasion, besides his Expences and Costs by him laid out about his Suit in this Cause, to one Shilling; and for his Expences and Costs, to fifty-three Shillings and four Pence: *Therefore it is considered*, that the said *A.* do recover against the said *C. D.* his said Debt, and the Damages assessed by the said Jury, by Reason of detaining the same, and fourteen Pounds for his Expences and Costs awarded by this Court to the said *A.* with his Consent, by way of *Increase*; which said Damages in the Whole, amount to sixteen Pounds fourteen Shillings and four Pence; and be the said *C.* amerced, &c.

If before the Act of Parliament of the Third of His present Majesty's Reign, for regulating Juries, there were not Jurors enough appear'd of the Persons that were mentioned in the Panel annexed to the Habeas Corpora or Distringas, then that deficient Number, which was usually called a Tales (that is) Persons that are so far such

such, as are in the Panel, that they were to be of that County, and qualified with all the necessary Requisites; as that they were to be in no wise related either to the Plaintiff or Defendant (and who had ten Pounds a Year in Lands, Tenements, or Rents) were before the said late Act granted by the Court to be taken de Circumstantibus (that is) of Persons standing by, and attending about the Court, and to be impanelled with the rest that did appear; but by that Act the Jury now are to be taken out of forty-eight, so that there is not likely to be any Tales de Circumstantibus, as was usual before; therefore as that is the Case, and as we have a Maxim in the Law, cessante causa, cessat effectus, the Fee of two Shillings, which the Marshal, Sheriff, and Cryer, used to take for such Tales, is now abolished; yet I do not apprehend that the Act has totally taken away from the Court the Power of granting a Tales; but should it ever happen to be the Case, by reason of any Sickness, or otherwise, that twelve Jurors should not come out of the forty-eight, or by reason of Challenges, they should be reduced to a deficient Number, in that Case the Court, I believe, may yet grant a Tales; and where-ever that is the Case, I submit this Entry to the Consideration of the Practisers.

In the Postea of a Record tried in London or Middlesex, after the Words, according to the Form of the Statute in that Case made and provided, and in a Postea of a Record tried at the Assizes, after the Words, the Presence of the said Alexander Denton not being expected, you must go on thus:

And the Jurors of the said Jury being summoned, some of them, (that is to say) E. P.
G. H.

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Bench.

G. H. (so recite as many of the Jurors of the said Jury, as appeared) came, and being balloted according to the Form of the Statute in that Case made and provided, are sworn upon the Jury; and because the rest of the said Jurors have not appeared, therefore others of the Persons standing by the Court, are at the Request of the Plaintiff, and by the Command of the said Justice, elected by the Sheriff of the said County, and newly added, the Names of which are affixed in the Panel under-written, according to the Form of the Statute in such Case made and provided; which said Jury newly added (that is to say) I. K. L. M. N. O. (reciting the rest that were added to the former, to make up the Number twelve) likewise came, who being elected, tried, and sworn, together with the said other Jurors, before balloted, impanelled, and sworn to declare the Truth of what is within contained, say upon their Oath, &c. as the Verdict is.

And I submit it, whether as this Act appoints a Number not less than 48, or more than 72, to be returned on every *Venire*; whether the Form of the *Venire*, as well as the Award thereof, should not now be altered to make them consonant to the Nature of the Thing intended by them; and therefore whether the *Venire* should not now be thus:

We command you, that you cause to come before us at *Westminster, on Thursday next after three*

three Weeks from the Holy Trinity, a Number, ^{King's Bench.} and not less than 48, or exceeding 72, of free and lawful Men of the Body of your County, out of which twelve may be ballotted, according to the Form of the Statute in such Case made and provided, every one of which to have ten Pounds a Year in Lands, Tenements, or Rents, at least. And then go on as in the *Venire* herein before inserted, and the Award to be thus:

Therefore let a Number not less than 48, or exceeding 72, of Persons of the said Court, come before our Sovereign Lord the King, at *Westminster*, (on the Day of the Return of the *Venire*) out of which twelve may be balloted to make a *Jury* thereof, between the said Parties, according to the Form of the Statute in that Case made and provided, and who are in no wise related, &c. as in the Award of a *Venire* herein before inserted.

And the *Distringas* to be altered, *Mutatis mutandis.*

If there is a View before the Trial, according to the Form of the Statute of the 4th and 5th of Queen *Anne*, I submit whether this following Entry will not be thought proper for that Purpose, now the Method of impa-
nelling Juries is altered.

The Form of a Distringas for a View before a Trial.

George the Second, &c. to the Sheriffs of *Norfolk*, Greeting. We command you, that you
distrain

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Bench.

distrain the several Persons mentioned in the Panel hereunto annexed, Jurors summoned into our Court before us, between *A. B.* Plaintiff, and *C. D.* Defendant, by all their Lands and Chattels in your Bailiwick; so that neither they, or either of them, or any other Person for them, meddle therewith, until you have another Precept therein from us; and that you answer for the Issues of the same to us, so that you have their Bodies before us at *Westminster*, on *Wednesday* next after fifteen Days from the Feast-Day of *Easter*, or before our Justices appointed to hold the Assizes in your County, if they should come there before (that is to say) on *Wednesday* the Twenty first Day of *March*, at *Thetford* in your County, by Force of the Statute in that Case made and provided; out of which a Jury of the County may be balloted for, and made between the said Parties, in an Action of *Trespass upon the Case*, and to hear their Judgment for their many Defaults. And in the mean Time, according to the Form of the Statute in such Case made and provided, six of the Persons named in the said Panel here-to annexed (that is to say) *A. B. C. D. E. F. G. H. I. K. L. M.* being agreed on by the said Parties to view the Place in Question (if the Viewers are not agreed to by the Parties, but appointed by the Master, which I understand to be the proper Officer meant by the said Act for that Purpose) then say thus, Being appointed by the Court to view the Place in Question. If they are appointed by the Judge who is to go that Circuit, which the Act says may be done if need be, the Necessity of which may arise in this Manner:

If either of the Parties alledges to the Master ^{King's Bench.} that which he thinks not a sufficient Reason for his Refusing such Person or Persons to be Viewers, then by a Summons before a Judge, if the Judge on an Attendance for that Purpose conceives, that the Reasons offered against such Viewers were good, he is impowered by this Act to name the Viewers, and then you must say, Being appointed by Alexander Denton, one of our Justices of the Court of Common Pleas, according to the Form of the Statute in that Case made and provided: Therefore we command you, that you have those six Persons so agreed on (or appointed, as the Case is) at the Place in Question, upon the 8th Day of March next, who shall there view the said Place in the Presence of J. M. on the Part of the Plaintiff, and W. F. on the Part of the Defendant, appointed by our Court before us, to shew the said Place to the Viewers; and in what Manner you shall have executed this our Precept, do you signify by a Return thereof to our said Justices, at the said Assizes, remitting to us this our Writ. Witness Robert Lord Raymond, &c.

The Entry of which is as follows :

And the said C. D. by Henry Cruweys his Attorney, comes and defends the Force, Injury, and Damages, and whatsoever else he ought to defend, where and when the Court will consider thereof; and saith he is Not guilty of the Trespass above laid to his Charge, in such Manner and Form as the said A. hath above declared against him; and of this he puts himself upon his Country; and the said A. does

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Bench.

does likewise the same: Therefore let a Number not less than Forty-eight, nor exceeding Seventy-two, of free and lawful Men of the Body of your said County, come before our Sovereign Lord the King at *Westminster*, on (*the Day of the Return of the Venire*) out of which Twelve may be balloted to make a Jury thereof, between the said Parties, according to the Form of the Statute in such Case made and provided; and who neither, &c. To recognize, &c. Because as well, &c. The same Day is given to the said Parties to be there, &c. At which Day came the said Parties before our Sovereign Lord the King, at *Westminster*, by their said Attornies, and the said Sheriff of the County of *Norfolk* (that is to say) *J. S. Esq;* returned the Writ, *to cause the said Jury to appear*) in all Things served and executed, together with a Panel of the Names of Jurors, summoned according to the Form of the Statute in that Case made and provided, annexed to the said Writ, of which none, &c. Therefore the Sheriff of the said County is *commanded*, that he distrain the several Persons mentioned in the Panel to a Writ directed to him for that Purpose, by all their Lands, &c. And that of the Issues, &c. That he may have their Bodies before our Sovereign Lord the King, at *Westminster*, on *Wednesday*, next after three Weeks from the Feast-Day of *Easter*, out of which a Jury of the County may be balloted, and made between the said Parties in the said Action, according to the Form of the Statute in such Case made and provided. And in the mean Time, according to the Form of the Statute in

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in such Case made and provided, the said Sheriff is also commanded, that he cause Six of the Persons named in the said Writ (whereby he was commanded to cause the said forty-eight Persons to come before our Sovereign Lord the King at *Westminster*, at the Day of the Return of the said Writ) that is to say, *A. B. C. D. E. F. G. H. I. K. and L. M.* agreed on by the said Parties to view the Place in Question, upon the eighth Day of *March* last past, who should there view the said Place in Question, in the Presence of *J. M. and W. F.* appointed by this Court of our said Sovereign Lord the King, to shew the Place to the said Jurors; and that in what Manner he should execute that Writ, he should signify to our said Sovereign Lord the King by a proper Return thereof. The same Day is given to the said Parties to be there, &c. At which Day came the said Parties by their said Attornies, before our said Sovereign Lord the King, and the Sheriff of the said County made a Return, That by Virtue of the said Writ he had caused the said six Jurors named in the said Writ to view the said Place in Question, then and there shewed to them by the said *J. M. and W. F.* as by the said Writ he was directed to do, according to the Tenour of the same. And that the remaining Part of the Execution of the said Writ appeared in the Panel annexed to the said Writ. And thereupon the Jurors of the said Jury, that is to say, the said *A. B. C. D. &c.* being summoned, came, and are impanelled and sworn upon the Jury, to try the Cause between the said Parties, and others (that is

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to

to say) *N. O. P. Q. R. S. W. H. B. M.* and *C. A.* named in the Panel of the said Writ, by which the Sheriff was commanded to distrain the Jurors, being balloted, according to the Form of the Statute in that Case made and provided, whose Names are contained in the Panel here under written, are impanelled and sworn, who (together with the said other Six before impanelled and sworn) to declare the Truth of the within Contents, declare upon their Oaths, &c.

Placita.

Pleas before our Lord the King at Westminster, of the Term of St. Hillary, in the sixth Tear of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith.

Jurata.

Berkshire, (to wit) The Jury between *Tbo. G. Gentleman*, Plaintiff, by his Attorney, and *William Wilkins* late of in the County of *Berkshire*, Grocer, Defendant, of a Plea of Trespass upon the Case, is respited before our Lord the King at *Westminster*, to *Wednesday* next after fifteen Days from *Easter* Day, unless the King's Justices assigned to hold the Assizes in the said County of *Berkshire*, shall first come on the Day of at in the County aforesaid, according to the Form of the Statute in such Case made and provided, for Default of the Jurors, because none of them did appear; therefore let the Sheriff have the Bodies of the

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the said Jurors, to make the said Jury between the Parties aforesaid, of the Plea aforesaid. Accordingly the same Day is given to the Parties aforesaid, at the same Place. And be it known that the King's Writ in this Case upon Record was delivered to the Deputy-Sheriff of the aforesaid County, on the 12th Day of February in the same Term, before our Lord the King at Westminster, to be executed according to Law, at his Peril.

Note; These following Forms of the Placita, Jurata, and Imparlance, were what I had from the Nisi prius Office, some few Remarks whereupon you may observe amongst others on the Jurata and Habeas Corpora in that Court.

And now at this Day, (to wit) *Tuesday* *Imparlance.* next after the *Octave* of St. Hillary, in this same Term, to which Day the said *William Smith* had Licence to imparl to the Bill aforesaid, and then to answer thereunto before our Lord the King at Westminster, come as well the said *John Andrews* by his Attorney aforesaid, as the said *William Smith* by *Thomas Jones* his Attorney; and the said *William Smith* defends the Wrong and Injury laid to his Charge by the said *John Andrews* in his Declaration aforesaid, which he will be ready to maintain when and in such manner as the said Court shall direct, and saith that he made no such Promise to the said *John Andrews*, as he in his Declaration aforesaid hath alleged against him; and thereupon he putteth himself upon his Country; and the said *John Andrews* does the like: Therefore let a Jury come before our Lord the King at Westminster, on *Monday*

Monday next after the *Octave* of the Purification of the Blessed Virgin *Mary*, who are in no ways of Kin either to the said *John Andrews*, or the said *William Smith*, to take Cognizance upon their Oath of the whole Truth of the Premises; because as well the said *William Smith*, as the said *John Andrews*, have put themselves upon that Jury. The same Day is given to the Parties aforesaid at the same Place.

The Terms and their Returns.

As to the General Returns to proceed by Original, see for the Returns in the *Common Pleas*.

Hillary-Term.

On *Tuesday* next after the *Octave* of St. *Hillary*.

On *Tuesday* next after fifteen Days from St. *Hillary*.

On *Tuesday* next after the Morrow of the Purification of the Blessed Virgin *Mary*.

On *Monday* next after the *Octave* of the Purification of the Blessed Virgin *Mary*.

Easter-Term.

On *Wednesday* next after fifteen Days from the Feast of *Easter*.

On *Wednesday* next after three Weeks from the Feast of *Easter*.

On *Wednesday* next after one Month from the Feast of *Easter*.

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On *Wednesnay* next after five Weeks from
the Feast of *Easter*.

On *Monday* next after the Morrow of the
Ascension of our Lord.

Trinity-Term.

On *Friday* next after the Morrow of the
Holy Trinity.

On *Wednesday* next after the *Octave* of the
Holy Trinity.

On *Wednesday* next after fifteen Days from
the *Holy Trinity*.

On *Wednesday* next after three Weeks from
the *Holy Trinity*.

Michaelmas-Term.

On *Tuesday* next after three Weeks from
St. Michael.

On *Tuesday* next after one Month from *St.*
Michael.

On *Tuesday* next after the Morrow of *All-*
Souls.

On *Thursday* next after the Morrow of *St.*
Martin.

On *Wednesday* next after the *Octave* of *St.*
Martin.

On *Wednesday* next after fifteen Days from
St. Martin.

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FOR Pleas in *Abatement* and Observations thereon, see among the Proceedings in the *Common Pleas*, Title *Abatement*.

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See of *Assizes* among the Proceedings in the *Common Pleas*.

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